SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 1

FRIDAY, MAY 15, 1931

ORGANIZATION

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

HOUSE OF COMMONS,
OTTAWA, April 23, 1931.

Resolved,—That Bill No. 4, An Act to amend the Copyright Act, be referred to a Special Committee consisting of Messrs. Bury, Cahan, Chevrier, Cowan (Port Arthur-Thunder Bay), Ernst, Irvine and Rinfret, with power to send for persons, papers and records, and to report from time to time.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

FRIDAY, May 15, 1931.

Ordered,—That the said Committee be granted to leave to print 400 copies in English and 150 copies in French of the proceedings and of the evidence to be taken by it, together with such papers and documents as may be incorporated with such evidence, for the use of the Committee and for the use of the members of the House; and that Standing Order 64 be suspended in relation thereto.

And that the said Committee be granted leave to sit while the House is sitting.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

MEMBERS OF THE COMMITTEE

Hon. C. H. CAHAN, K.C., *Chairman.*

Mr. A. U. G. Bury,	Mr. W. G. Ernst,
Mr. E. R. E. Chevrier,	Mr. W. Irvine,
Mr. D. J. Cowan,	Hon. Mr. F. Rinfret,

T. L. McEvoy, *Secretary.*

REPORTS OF COMMITTEE TO THE HOUSE

FIRST REPORT

HOUSE OF COMMONS, CANADA,
FRIDAY, May 15, 1931.

The Select Special Committee appointed to consider and report upon Bill No. 4, An Act to amend the Copyright Act, R.S.C. 1927, c. 32, begs to present the following as a First Report:—

Your Committee recommends that it be granted leave to print 400 copies in English and 150 copies in French of its proceedings and of the evidence to be taken by it, together with such papers and documents as may be incorporated with such evidence, for the use of the Committee and for the use of the members of this House; and that Standing Order 64 be suspended in relation thereto.

Your Committee further recommends that it be given leave to sit while the House is sitting.

All of which is respectfully submitted.

C. H. CAHAN,
Chairman.

MINUTES OF PROCEEDINGS

SPECIAL COMMITTEE APPOINTED BY THE HOUSE OF COMMONS, CANADA, TO CONSIDER AND REPORT UPON BILL No. 4, AN ACT TO AMEND THE COPYRIGHT ACT, R.S.C. 1927, c. 32.

COMMITTEE ROOM 268,
FRIDAY, May 15, 1931.

Pursuant to notice, the Committee convened at 10 o'clock.

Members present: Messrs. Bury, Cahan, Chevrier, Ernst, Irvine and Rinfret—6.

On motion of Mr. Bury, seconded by Mr. Rinfret, Mr. Cahan was chosen to act as Chairman.

The Chairman read the Order of Reference and explained generally the principle of the Bill which had been referred to the Committee and made short statements with reference to each section of the Bill.

The Chairman then outlined the scope of the enquiry entrusted to the Committee. It is not proposed that the Committee should consider amendments to the Copyright Act generally, but will confine itself strictly within the ambit of the Bill referred.

Discussion followed.

The Chairman intimated that he proposed to amend that section of the Bill which deals with the powers of the Registrar of Copyright.

As no witnesses were ready to be heard to-day, the Chairman intimated that interested parties should be prepared to be heard at the next meeting.

On motion of Mr. Ernst, it was rsolved that the Committee do report and obtain leave from the House to print 400 copies in English and 150 copies in French of the proceedings and evidence to be taken together with such papers and documents as may be incorporated with such evidence, for the use of the Committee and for the use of the members of this House; and that Standing Order 64 be suspended in relation thereto; and that the Committee be given leave by the House to sit while the House is sitting.

The above report was presented to the House on Friday, May 15 and motion for concurrence therein was agreed to on that date. (See Votes and Proceedings of Friday, May 15, 1931.)

The Committee adjourned until Monday, May 18, at 10 o'clock.

T. L. McEVOY,
Clerk of the Committee.

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MINUTES OF PROCEEDINGS

Room 268, House of Commons,

Friday, May 15, 1931.

The Select Standing Committee on Bill No. 4, An Act to amend the Copyright Act, met at 10 o'clock, a.m.

Mr. Bury: Gentleman, I beg to move that Mr. Cahan be elected Chairman of the Committee.

Mr. Rinfret: I second the motion.

Carried.

The Chairman: The order of reference is as follows: The House of Commons on April 23rd, 1931, resolved that Bill No. 4, an Act to amend the Copyright Act, be referred to a special committee consisting of Messrs. Bury, Cahan, Chevrier, Cowan (Port Arthur-Thunder Bay), Ernst, Irvine and Rinfret, with power to send for persons, papers and records, and to report from time to time. It is attested by Arthur Beauchesne, Clerk of the House.

Bill No. 4, an Act to amend the Copyright Act deals with three or four phases of Copyright. The second section is an extension of the definition contained in the Act, so as to make the scope of the Act adequate for the enforcement of the Rome Copyright Convention, in case that Convention is ratified by Canada.

The third section is to conform to the Rome Copyright Convention with regard to reproduction by cinematograph. According to the English decisions, that provision is already covered by the present Act; but the Rome Convention specifically covers it, and it seems expedient to make our Act conform in express terms.

The fourth section, I do not think, should cause us any difficulty. It was an error in our original Copyright Act to make, in the case of joint authorship, the term to expire fifty years from the death of the author who dies first; whereas in our treaty obligations, we assented to the term expiring fifty years from the death of the author who died last.

Then, to conform with the Rome Convention, section five is suggested, which gives the author the right to restrain acts which are prejudicial to his honour or reputation, even although he may have assigned the copyright in his work.

Section 6 is in conformity, I think, with the common law of England. In fact it is suggested in order to bring, so far as this bill is concerned, the civil law in conformity with the common law, with respect to the assessment of damages.

Section 7 makes it clear that an author, or an owner of a copyright, may grant separate and distinct rights in copyright and that these may be enforced separately by the assignee.

Section 7 (5) provides for the concurrent jurisdiction of the Exchequer Court, and it may be open to some argument and discussion.

Section 8 provides an amendment to the present Act, in view of the fact that the Commissioner of Patents is Registrar of Copyright, which amends

the powers of the Commissioner of Patents under the Copyright Act to conform to the express terms of the Patent Act, so that his powers and authorities under each Act are the same.

Section 9 deals with the question of registration of assignments and grants. That section of the Act, as it now stands, requires the registration of assignments or grants to be executed in duplicate, and one duplicate copy to be registered and deposited with the Copyright Office. We have had protests, as my predecessor in office will concur, against our present section; and this amendment is to provide that such registration is not compulsory, but, in the case in which there are adverse assignments, the one who does register, until that registration is removed, shall exercise the right of assignee. The provision with regard to the modes of attesting the execution of these instruments is enlarged somewhat.

Section 10 deals with performing rights societies and is, I presume, the clause which will receive most discussion.

Then, section 11 deals with the performance of musical works by churches, colleges, schools, or by philanthropic, charitable or fraternal organizations, provided the performance is given for religious, educational, benevolent or charitable purposes. Section 11 has involved a great deal of discussion, as well as protests, which I have received from one end of the country to the other. I have received protests from a large number of agricultural societies in the central provinces, and many from the east and west as well. The contention is that agricultural exhibitions and fairs should be allowed to perform musical works without buying a licence or being charged a royalty in respect thereof, on the ground that they are not institutions organized and performing for profit.

Section 12 brings our Act into conformity with the English Act and the American Act. It states that at least two copies of each edition of a work published in Canada, and for which a copyright is granted, shall be filed with the Librarian of Parliament.

Section 14 deals with the adherence of Canada to the Rome Convention. It authorizes the Governor in Council to secure adherence of Canada to the revised Convention for the protection of artistic and literary works, which was signed at Rome the 2nd day of June, 1928, as set out in schedule A to this Act.

I think, with the consent of the committee, we will ask those who are opposed to any clause in this Act to appear and give such evidence as they may deem advisable or expedient in opposition to the enactment of this Bill in the form in which it now subsists. I may say that under the rules of the house the evidence to be given must be restricted to those special clauses of the Bill. It is not a general revision of the Copyright Act, which may be expedient at some time in the future. This Bill proposes certain changes in our present Act which would enable us to carry out the terms of the Rome Convention; and in addition it attempts to deal with the grounds of objection which are widespread, with respect to regulations of societies and companies which make a business of acquiring and granting of performing rights to musical and dramatic works.

Mr. RINFRET: Do I understand the Chairman to mean by that that it would not be in order to submit any amendment to the Copyright Act which is not directly connected with the sections of this Bill?

The CHAIRMAN: That is so, as I understand it.

Mr. RINFRET: Except, I suppose, some amendments that would be necessary to bring the Act in conformity with the Convention of Rome which have not been provided for in this Bill. That would be in order?

The CHAIRMAN: I should think so, because the Convention of Rome is attached, and that may be deemed one of the clauses of the Bill.

Mr. RINFRET: I suppose we can also conclude, from the words of the Chairman, that if there are clauses in this Bill which are not necessary to bring our Act into conformity with the Convention of Rome, these should be deleted?

The CHAIRMAN: No, I think not. I think we may deal with every substantial clause here in the Bill.

Mr. CHEVRIER: Provided it does not interfere with the terms of the convention?

Mr. RINFRET: That is a fair scope for evidence and argument, as to whether these clauses here do or do not.

Mr. CHEVRIER: Quite so; but if they do not—

Mr. CAHAN: Then you have a perfect right to move an amendment.

Mr. RINFRET: I will go farther than that. The chairman takes the stand that no new matter should be introduced in this bill, except as regards bringing the Act in conformity with the Convention of Rome.

The CHAIRMAN: I am not taking that stand.

Mr. RINFRET: That is what you have suggested.

The CHAIRMAN: No, I do not think so. I do not intend to suggest that. There are certain clauses in this bill which are for the purpose of authorizing ratification of the Convention of Rome, and, secondly, bringing our Act within the scope of its definition so as to cover certain provisions of the Rome Convention; but there are here certain independent sections which may, or may not, be in conformity with the Rome Convention which are proposed for consideration and amendment, if necessary.

Mr. RINFRET: I agree with that, but I was just going to suggest further that if in the course of the discussion, we should strike other matters which have not been studied in Rome at all, but which, we think, would improve the Act and that it would be quite proper to bring down amendments—

The CHAIRMAN: Mr. Rinfret, that is against the rules of the House. The discussion must be on the terms of the bill, and if you wish to get outside that, you must go to the House.

Mr. RINFRET: Then it comes back to an interpretation of the remarks of the Chairman. I understand that the Chairman suggests that we should confine ourselves to such clauses as are in this bill, and which are intended to bring our Act in conformity with the Convention of Rome.

The CHAIRMAN: And others as well.

Mr. RINFRET: That are already in the bill.

The CHAIRMAN: Quite so.

Mr. HACKETT: May I ask a question?

The CHAIRMAN: Section 792 says: "A new clause will not be entertained if it is beyond the scope of a bill, inconsistent with clauses agreed to by the committee or substantially the same as a clause previously negatived." There is another rule which says that the discussion before a select committee must be confined to the terms of the bill. I think we had better proceed and if you find some new provision that you wish to enact and which requires an enlargement of the order of reference, you will have to go to the House.

Mr. RINFRET: I just want to make a reference here this morning, that is all. I have nothing special in mind, excepting to find out exactly what we are to do.

The CHAIRMAN: What I wish to say is simply this, that we are not here for a general revision and amendment of the Copyright Act, that is not the intention of the bill.

Mr. RINFRET: We are to deal with this bill?

The CHAIRMAN: We are here to deal with this bill. If any matter arises out of this bill, I do not propose to raise any technical objections, but I hope the discussion will be restricted.

Mr. CHEVRIER: As I understand it, the intent is to bring us within the term of the Rome Convention. If anything turns up during the investigation that would point towards some discrepancy or some objection to our adhering fully to the convention of Rome, something else than what is in the bill is brought in then we can consider it?

The CHAIRMAN: Quite so. Take paragraph 781 of Beauchesne—"An amendment must be relevent both to the subject matter of the bill and the clause to which it relates; it must not be inconsistent with any previous decision of the committee; it must not be such as to make the clause which it proposes to amend unintelligible, or ungrammatical. It must not be based on schedules or other provisions the terms of which have not been placed before the committee; it must not be beyond the scope of the bill—"

Mr. RINFRET: Yes.

The CHAIRMAN: It must not be beyond the scope of the bill, but you may make an amendment within that limitation.

Mr. CHEVRIER: If we strike anything that has not been mentioned in this bill, and that is necessary to be put in so that we shall adhere to the Convention, then we will deal with it either by asking the House to enlarge the scope of the reference in order to allow us to deal with that, or—

The CHAIRMAN: That will be the only way. It is not the intention, at the present time, to examine the Act clause by clause, the licensing clause and a number of others which are the subject of grave dissension.

Mr. HACKETT: There is also a question I should like to ask. I understood you to say, Mr. Chairman, that adhesion to and ratification of the Rome Convention was one of the purposes of the bill.

The CHAIRMAN: Yes.

Mr. HACKETT: Now, if after ratifying the Rome Convention, we were to find that a section which is not referred to in our bill but which is in our legislation, was not in agreement with the Rome Convention, would that come within the meaning of this discussion?

The CHAIRMAN: I should think, in general, it would.

Mr. CHEVRIER: That is what we have to watch. We have to adhere to the Conventions.

Mr. HACKETT: Just to get a definite statement, your idea is there is nothing in our legislation—

The CHAIRMAN: Nothing in our present legislation?

Mr. HACKETT: —which is repugnant to the Rome Convention which is the topic of discussion?

Mr. CHEVRIER: I would support that view, if there is nothing outside the bill. Supposing we passed the bill as it is—if we do not pass it, then we do not adhere to the Convention. If we pass the bill as it is, with those clauses asking us to adhere to the Convention and some of the sub clauses of the bill, which seem to us are incompatible with the Berne convention, then we cannot adhere to the Convention because there are certain things which are incompatible with the terms of the Convention, being outside of the bill.

The CHAIRMAN: What I would like to suggest—

Mr. CHEVRIER: I think we can come to those as we go along.

The CHAIRMAN: We have adhered to the Berne Convention.

Mr. CHEVRIER: We have not adhered to it altogether.

The CHAIRMAN: We have adhered to the Berne Convention. Now, with respect to our present act and our adherence to the Berne Convention there has been no objection so far as our present existing laws are concerned by any of the parties to that Berne Convention except in respect to registration?

Mr. CHEVRIER: Yes.

The CHAIRMAN: And with respect to the terms of the life of the joint authorship?

Mr. RINFRET: And the moral right. And then the question as to cinematograph.

Mr. CHEVRIER: And recourse by law.

The CHAIRMAN: I have looked through every file. I obtained a complete file from External Affairs, in regard to this matter, and I do not intend, so far as I am concerned, this session, to spend any time in hearing hypothetical arguments advanced by individuals as to their views as to whether a particular clause in the old Act is consistent with the old Convention. In so far as our act deals with the Rome Convention, I think its terms are a proper subject for discussion.

Mr. BURY: I understood from you that the formal objections to existing legislation raised by the parties to the Berne Convention are dealt with in this amended bill.

The CHAIRMAN: I believe so.

Mr. BURY: Covered by the amended bill? Objections that have been made by parties to the convention in respect to existing laws; is that right?

The CHAIRMAN: That is my understanding.

Mr. RINFRET: That, of course, would be the view of the Minister, or his Department? And perhaps he is right, but if we submit that something has been omitted, surely it would be in order to discuss that omission?

Mr. CHEVRIER: I should think so.

The CHAIRMAN: What I want to do is to restrict this discussion as much as possible.

Mr. RINFRET: I understand that.

The CHAIRMAN: Why not wait until the matter arises and then discuss it?

Mr. RINFRET: If you take the view that Mr. Bury took, there will be nothing to discuss at all. We will take it for granted the bill also covers intention or principle—

Mr. HACKETT: He said it referred to the topics discussed.

Mr. RINFRET: Even so, some other topics may have been missed.

Mr. CHEVRIER: Quite so.

The CHAIRMAN: I propose to deal with the objections that have been made to the Department, and that is all the Department proposes to deal with.

Mr. CHEVRIER: Then, it precludes the hearing of evidence.

The CHAIRMAN: If it precludes the hearing of evidence with regard to a great number of matters which are not dealt with in the bill, I am not going to object. Here is the file dealing with this bill alone, and I propose to submit the whole file.

Mr. CHEVRIER: By the time you have been in session a couple of times there will be about five times as much as that.

The CHAIRMAN: I think we can proceed.

Mr. BURY: I take it that if any member of the Committee thinks that any witness can throw light on any section of the bill, he has the right to ask for that witness.

The CHAIRMAN: Surely.

Mr. IRVIN: That is the ordinary rule in connection with Committees.

Mr. HACKETT: Does the application have to come from a Member of the Committee?

The CHAIRMAN: People have been notified from the Atlantic to the Pacific. Official letters were sent to these people who have sent in these protests or recommendations with regard to the bill. They were asked to attend here on the 15th at 10 o'clock and present their views. If they did not care to present their views personally, they may send in a brief or statement to be presented.

Hon. Mr. RINFRET: Then, I would suggest, Mr. Chairman, that we hear the evidence first; that we allocate a certain number of sittings, and then after the close of hearing evidence, we get busy on the bill. I do not think we should hear evidence right through, and study the clauses at the same time; but we should devote certain sittings to evidence and then close the taking of evidence. That is my proposal.

The CHAIRMAN: You and I have been on Committees for the last six years. We know the ordinary procedure, and we are going to follow it in this case. There is no doubt about it.

Now, I will ask if there is anyone here who wishes to present evidence, or any objections to the bill in its present state. I see that the Executive head of the Performing Rights Society is present. They have a large interest in this bill. Perhaps he is ready to proceed.

Mr. REDMOND CODE: I represent the Canadian Performing Rights Society in a way. It is the intention of that Society to have their views presented through their counsel, Mr. Arthur Anglin, and I was wondering whether it would be possible to work out some sort of agenda.

The CHAIRMAN: I do not think that is possible unless you are prepared to take oath and go on and give evidence. Their position must be given by evidence before this Committee. Subsequently, if counsel wishes to argue some point, the opportunity will be given.

Mr. CODE: I want an opportunity of having Mr. Anglin here, and I would like to be able to suggest when he should be here. Therefore, I was wondering if it would be possible and practicable to work out some sort of agenda.

The CHAIRMAN: We are going ahead and will sit from hour to hour and day to day because this matter must be closed up within a week or ten days.

Mr. A. J. THOMSON: I represent the distributors and producers of motion picture films. I was called here rather suddenly from Montreal. I have had little time for preparation. I thought to-day's meeting was a preliminary one to outline procedure. As far as my knowledge of the case extends at present, I fancy that what I would desire to present to the Committee is largely argument—very little if anything by way of evidence—but I would like to have an opportunity until Monday to prepare. It is an important matter to my clients.

Mr. CHEVRIER: Is it the intention to sit say every day in order to expedite this?

The CHAIRMAN: Yes, I think so.

Mr. CHEVRIER: I thought this was purely an organization meeting. Supposing we said we would sit on Monday, and sit right through? I am not opposing anybody who is ready to proceed this morning. We could hear them.

The CHAIRMAN: If there is nobody ready to proceed, we will adjourn until Monday. We have one case, the Performing Rights Society, which will take two or three hours.

Mr. CODE: I think it would be safer, as far as Mr. Anglin is concerned, to make it Monday.

Mr. ERNST: I would personally prefer to see the sessions start on Monday

The CHAIRMAN: I have drafted the following resolution: Resolved the Committee do report and recommend that it be granted leave to print four hundred copies in English and one hundred and fifty copies in French, of its proceedings, and of the evidence to be taken by it, together with such papers and documents as may be incorporated with such evidence, for the use of the Committee and for the use of Members of this House; and that Standing Order 64 in relation thereto be suspended and also that the Committee be given leave to sit while the House is sitting.

Carried.

The Committee adjourned to meet Monday, May 18, at 10 o'clock, a.m.

SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 2

MONDAY, MAY 18, 1931

WITNESSES:

Mr. H. T. Jamieson, Canadian Performing Rights Society.

Mr. Gene Buck, American Society of Composers, Authors and Producers.

Mr. Nathan Burkan, General Counsel, American Society of Composers, Authors and Producers.

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

MONDAY, May 18, 1931.

Pursuant to notice, the Committee convened at 10 a.m.

Members present: Messrs. Cahan, Chevrier, Ernst and Irvine—4.

The minutes of proceeding of the meeting held on Friday, May 15, were read.

Objection by Mr. Chevrier to the minutes as read, on the ground that there had been deletions from the transcript of the discussion at the last meeting.

The Chairman read the ruling of the Board of Commissioners of Internal Economy concerning the reporting of discussion in Committee.

On motion of Mr. Ernst, the minutes of proceeding as read were adopted.

Mr. Henry T. Jamieson, C.A., F.C.A., President, Canadian Performing Rights Society, Toronto, was called, sworn and examined.

Documents tabled:

A. Brief, produced by Mr. A. J. Thomson, on behalf of Canadian Daily Newspapers Association;

B. Statement regarding the constitution, methods, etc., of Canadian Performing Rights Society;

B-1. Statement of Canadian Performing Rights Society in opposition to Bill No. 4;

C. Tariffs of Canadian Performing Rights Society;

D. Excerpts from list of members of above Society.

Witness engaged to produce: (*a*) copies of agreement of constituent members of Canadian Performing Rights Society; (*b*) copy of contract of affiliation between European Societies and British Performing Rights Society.

Witness retired.

The Committee adjourned till 4 p.m. this day.

T. L. McEVOY,
Clerk of the Committee.

AFTERNOON SESSION

COMMITTEE ROOM 268,
MONDAY, May 18, 1931.

The Committee convened at 4 p.m.

Members present: Messrs. Cahan, Chevrier, Ernst and Irvine—4.

Mr. Gene Buck, Kensington, Great Neck, N.Y., President, American Society of Composers, Authors and Producers and Vice-President of Canadian Performing Rights Society, was called, sworn and examined.

Document tabled:

G. Proclamation *re* Canada, 1923, information circular No. 63, Copyright Office, Library of Congress, Washington, D.C., U.S.A.

Witness retired.

Mr. Nathan Burkan, New York, General Counsel, American Society of Composers, Authors and Producers, was called, sworn and examined.

Witness engaged to produce: (*a*) form of contract between the Society he represents and the constituent members of that Society; (*b*) tariffs of American Society of Composers, Authors and Producers; (*c*) copy of articles of association of the Society of which he is General Counsel; (*d*) brief of American Society of Composers, etc. in case recently argued in New York courts.

Witness discharged.

The Committee adjourned till Tuesday, May 19, at 10.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF EVIDENCE

ROOM 268,

HOUSE OF COMMONS,

MONDAY, MAY 18, 1931.

The Select Standing Committee on Bill No. 4, an Act to amend the Copyright Act, met at 10.00 o'clock a.m.

The CHAIRMAN: We will call the meeting to order.

Minutes of last meeting read.

The CHAIRMAN: Are the minutes as read approved?

Mr. CHEVRIER: No, I object Mr. Chairman. In reading through the minutes of proceedings and evidence I find that a certain amount—at least two features anyway that were mentioned the other day are left out, and I want to know why the reporters did not put them in. I refer particularly to the features concerning the discussion that took place with reference to the admission of witnesses and with reference to the Commissioner of Copyrights. I made a number of remarks in that respect, and somebody took them out of the minutes. I certainly do not want to let anyone interfere with what I have said. Anything I say I want to be taken in the notes and produced in evidence, or in the minutes of proceedings. If there is anything to be said that is not to go in the minutes of proceedings and evidence, it had better not be said. I do not know why—

The CHAIRMAN: In the rule which governs the proceedings of these committees, in regard to discussion—and which should be observed—it is provided that "it must be therefore understood that beyond the mere noting of objections raised and the chairman's ruling thereon, which is necessary to render the record intelligible, discussions in committee are not to be taken down in shorthand and transcribed." That is a rule of the Internal Economy Commission of the House of Commons, and that rule I intend to see enforced as long as I remain as Chairman, unless the House of Commons directs otherwise.

Mr. CHEVRIER: I am satisfied if that rule is obeyed there will be no trouble. But there was something fundamentally important about the practice as to how witnesses were to be allowed to testify, and then there was an attack upon an officer who is not here. I haven't seen him. I haven't spoken to him in months. He had no opportunity to defend himself. But I made certain remarks and they are taken out. If there is to be an editor of this committee—

The CHAIRMAN: I will follow the rule until I receive other instructions from the House of Commons.

Mr. CHEVRIER: I will protest that my remarks were taken out without my consent.

The CHAIRMAN: I beg your pardon.

Mr. CHEVRIER: I will make a protest to the House that my remarks were taken out without my consent.

The CHAIRMAN: Quite so. There was no reflection upon the Commissioner of Patents or any other official in the Patents office or the Copyright office by me or anybody else. The reporters who made the report in the papers to the contrary were entirely wrong.

Mr. CHEVRIER: That is something.

The CHAIRMAN: So far as the Commissioner of Patents is concerned, I have never had an unpleasant word with him in my life, and I do not expect to have.

Mr. CHEVRIER: I will have to take it up with the House unless I get a formal promise that anything that I say—I take the responsibility for saying what I say, and I do not want anybody to interfere with what I have said.

The CHAIRMAN: Anything that is said here that is in the way of evidence, that deals directly with the terms of the Bill now before this Committee will be reported. Anything even that is helpful—

Mr. CHEVRIER: Who is to say that?

The CHAIRMAN: I believe the Chairman is to say it until there is some other authority to say it.

Mr. CHEVRIER: If the Chairman is going to be the editor of this committee—

The CHAIRMAN: The Chairman will instruct the reporters not to publish anything that is not in accord with the rule I have just read. Now, Gentlemen—

Mr. CHEVRIER: These minutes can go through, but I dissent.

The CHAIRMAN: I move—I am not approving of the minutes of evidence; I am approving of the minutes of proceedings which were just read.

Mr. CHEVRIER: If this is taken as part of those minutes, then I dissent.

The CHAIRMAN: I move seconded by Mr. Ernst that they be approved. Carried.

The CHAIRMAN: It was the understanding to-day that we were to have a statement, I understood, from some of the officials of the Performing Rights Society.

Mr. THOMSON: Before you take that up, I am submitting a brief on behalf of Canadian Daily Newspapers Association. I do not propose to submit any argument. It deals with the right of reproduction by newspapers and periodicals of articles of other newspapers and periodicals, a subject which is covered by sections 9 and 10 of the Convention.

Mr. Patridge was not able to be here to-day and he asked me to submit it.

The CHAIRMAN: Do you intend to put this in circulation?

Mr. THOMSON: Not unless the Committee wishes it.

Mr. IRVINE: Will that appear in the Minutes, Mr. Chairman?

The CHAIRMAN: I do not know. I am afraid we will have to have a committee to decide what shall appear in the minutes, otherwise we will not have the minutes of these proceedings published till long after the session is over.

Mr. THOMSON: I would like that to be incorporated in the proceedings.

The CHAIRMAN: Mr. Thomson, whether it appears in the blue book or not, will depend upon the decision of the committee at the close of these proceedings. There has so much been submitted that is irrelevant.

Mr. ERNST: We might find it possible, merely as a record, to put it in as an appendix.

The CHAIRMAN: But we have hundreds of documents of the same purport.

Mr. ERNST: Those that are formally presented to the committee. You and I both have received briefs galore.

Mr. CHEVRIER: In the meantime, it would be well to furnish the committee with a copy of the brief.

Mr. THOMSON: I can do that.

Mr. ANGLIN: I am here, with Mr. Cassels, representing the Canadian Performing Right Society.

Might I say one word before passing on to the subject of the document Mr. Thomson has just handed to me. I gather that it deals with a subject of the Convention which does not form any part of the subject matter of the Bill which is before the committee. It would seem, therefore, rather to fall within what I gather are recommendations or the determination of the committee at its original meeting, at which I had not the good fortune to be present, that the proceedings before the committee should be confined to the subject matter of the present proposed Bill, and should not extend generally to a consideration of other matters arising out of Copyright and the general Act now in force. This, therefore, seems to fall without the limitation. I do not know whether, therefore, we need concern ourselves at all at the present with whatever may be in Mr. Thomson's memorandum. I have not seen it.

The CHAIRMAN: I have not had an opportunity of seeing it, but so far as my personal view goes, if it deals with other sections of the Act which are not covered, and amended or modified by the present Bill, I for one do not intend to consider it.

Mr. THOMSON: Might I make the point; it does not deal with any section of the present Act. It deals with sections of the two Conventions which are not found in our legislation at all. I have regard, sir, to the express opinion of this committee, as I understood it on Friday, I think you, sir, said in answer to the question of Mr. Chevrier, or Mr. Rinfret, that it was the avowed object of this Bill to bring the Canadian Act into conformity primarily with the convention of Rome.

The CHAIRMAN: The present Copyright Act of England is sufficient in its scope for the enforcement of the provisions of the Berne Convention. I have not read the brief, but I understand your brief deals with certain sections of our Act.

Mr. THOMSON: No, sir, something not found in our Act.

The CHAIRMAN: Just a moment. Your contention is that certain sections of our Act are not sufficiently broad to carry out certain stipulations of the Berne Convention.

Mr. THOMSON: They are not covered at all.

The CHAIRMAN: The same sections of the British Act are quite sufficient. I am not going into an argument to-day on that question.

Mr. THOMSON: I was not instructed to make any argument, simply to present that brief.

Mr. ANGLIN: Then, Mr. Chairman, and gentlemen, as I say, I was not here the other day, but I heard the minutes read. I understand it is now the purpose of the committee to hear evidence in whatever order the committee may think best. Might I ask if it is intended that evidence should be presented as in court, by question of counsel and answer of witness, or would it be better, and shorter perhaps, if the witnesses were allowed to give their evidence, as it were, in narrative form, subject to questioning later?

The CHAIRMAN: We will hear what is usual, a statement from the witness. He can refer to his notes or manuscript as he sees fit in making that statement, but he must be subject to interrogation after he has made it.

Mr. ANGLIN: Quite so.

The CHAIRMAN: I understand there are representatives from the Author's Rights of New York and the Performing Rights Association of England. I think we will hear them in order. I see no objection to it.

Mr. ANGLIN: I think, also, sir, it might perhaps be well if we had an understanding on this point, that the witnesses had better confine themselves as far as they can to what one might call their case in chief, not anticipating or endeavouring to anticipate, what may be said by someone in opposition, but rather leaving that in the ordinary way for reply if necessary.

The CHAIRMAN: We will follow that procedure.

HENRY T. JAMIESON, called and sworn.

By the Chairman:

Q. Will you state your official position and residence, Mr. Jamieson.—A. I am President of the Canadian Performing Rights Society, residing in Toronto. The offices of the company are in Toronto. The society appreciates very much the opportunity granted us by this committee fully to state our case against Bill No. 4 of the House of Commons, an Act to Amend the Copyright Act.

Mr. Ralph Hawkes representing a director of the society, and representing the British Society, is here with me, as is also Mr. Gene Buck, also one of our directors, and who represents the American Society and others, composers and publishers. These gentlemen are prepared to answer any questions dealing with the operations of their companies in England and United States.

Our case is contained in certain memoranda which I will read.

Mr. CHEVRIER: Do I understand you to say you are not putting in "B."

Mr. JAMIESON: No.

(1) *Canadian Performing Right Society, Limited:*

The Canadian Performing Right Society, Limited, was duly incorporated in 1925, under the provisions of the first part of Chapter 79, of the Revised Statutes of Canada, 1906, known as "The Companies Act," and Amending Acts.

The Society was formed as a branch of The Performing Right Society, Limited, of London, England, and, since 1930, has been jointly operated by that Society and the American Society of Composers, Authors and Publishers.

The British and American Societies are Associations of composers, authors, publishers and proprietors of copyright musical works, established to collect fees for the public performance of such works and to restrain unauthorized performances thereof. Through these Societies, the Canadian Society controls the Canadian performing rights in the works owned by the members of the British and American Societies and of the kindred Societies in France, Germany, Austria, Italy, Spain, Sweden, Roumania, Denmark, Hungary, Poland, Switzerland, Czechoslovakia, Portugal and Brazil, Norway and Finland, affiliated with the British Society.

The Canadian rights, owned by the members of all the Societies mentioned, are obtained under the Canadian Copyright Act, 1921. This follows the International Copyright Convention of Berne as revised at Berlin in 1908, to which Canada adhered on 1st January, 1924. The Act provides that copyright shall subsist in Canada in every musical work, if the author is a British subject or subject of a foreign country, which has adhered to the Convention and the additional protocol thereto set out in the second Schedule to the Act.

Reciprocally, Canadian authors enjoy in all other countries of the Union for their works, the rights which the respective laws of those countries do now or may hereafter grant to natives as well as the rights specially granted by the Convention.

It will be seen that affiliations between National Societies are necessary to provide in each country the machinery for the protection of their combined repertoire.

The Canadian Performing Right Society, Limited, is the organization formed for the purpose of collecting fees in this country for the public performance of Canadian, British or foreign musical works, in which copyright subsists under the Canadian Act.

(2) *Need of Association:*

The demand for popular music is world-wide. An individual author, composer or other proprietor of musical works cannot himself protect his interests, issue permits and collect fees throughout the whole world. A world-wide organization is a necessity. The author must associate with others.

It is necessary to emphasize that the preservation of the rights of the author is wholly dependent upon the regular and consistent restraint, by a Society, of unauthorized performances which are frequently taking place throughout the country without notice to the author, and with disregard for copyright.

(3) *Aims and objects of Canadian Society:*

Members, as distinct from licence holders, on election invest the Societies with sole authority to grant licences in the several countries mentioned, to collect fees in respect of public performances of their copyright musical works and, on their behalf, to exercise and enforce all rights and remedies relating thereto.

The Canadian Society represents 917 British authors and composers, 102 British publishers, 711 American authors and composers, 91 American publishers and 26,500 members of the affiliated foreign societies.

Both the controlling Societies are membership Societies. These Societies are directed by the members (authors, composers and publishers). No membership fees are paid. No dividends are paid.

The collection of fees for the public performance of musical works, of which the performing right is vested in the Society, is effected by the grant of licences to responsible proprietors of places of entertainment, or to the organizers of musical entertainments, in order to avoid placing a charge on musical directors, vocalists, musicians or other performers. These licences give a general permission for the public performance, not only of the copyright musical works of its members, but also those of members of the affiliated foreign Societies, as referred to above, comprising a repertoire of approximately three million musical works. Information as to the works contained in its repertoire is given by the Society by the extensive circulation of a list of music publishers and other members, and particulars of the Society's foreign affiliations, and this list enables anyone to ascertain what music may not be performed in public without the Society's licence. Many licences have been granted by the Society, and the fees payable are assessed at very moderate amounts, according to various tariffs applicable to different forms of entertainment. Information regarding the fees payable in any particular case is readily obtainable from the Society. It can be asserted confidently

that the scale of fees charged by the Society is lower than that of any of the foreign Societies. The Select Committee on the Musical Copyright Bill stated in its Report that the British Society's fees compared not unfavourably with those charged in other countries.

In addition to the tariffs, to which reference has been made, there are special scales of fees, contained in contracts made for a period of years with representative bodies.

(4) *Tariffs:*

The Society's tariffs are not haphazard, but are according to a definite basis or scale. Of our tariffs, (1) the broadcasting tariff, (2) the hotel tariff (3) the steamship tariff and (4) the theatre tariff have been accepted by music users. Contracts have been written at these tariffs with (1) several broadcasting stations, including CKGW, Toronto, (2) Canadian Pacific Hotels, (3) Canadian Pacific Steamships, Limited, and Canada Steamships Lines, Limited, (4) Famous Players Canadian Corporation, Limited, and others.

It will be seen that this Society has proved, in negotiation, that it affords reasonable and fair terms. Its tariffs are extremely moderate as will be seen from the following instances:—

One radio station pays the Society $5,000.00 per annum, i.e., a little over $1.00 per hour. The station charges advertisers $95.00 to $190.00 per hour for its musical programs.

The Society's tariff for the large hotels is less than $1.00 per day.

The Society's tariff for large theatres, the income of which ranges from $15,000 to $20,000 per week, is only $3.00 to $4.00 per week.

A dance hall spending over $13,000 per annum on its orchestra would pay the Society only $60.00 per annum for its licence.

(5) *Distribution of fees:*

All revenues, after the expenses of collection have been paid, are distributed to the members of the British, American and affiliated foreign Societies.

The method, followed by the British Society, ensures an equitable distribution of fees, obtained from its licensees (the proprietors of theatres, cinemas, hotels, etc.), among its members and the affiliated foreign societies. Programmes or returns of music performed at their respective premises, and the analysis of these programmes and returns form the basis of distribution. Each member of the Society is credited with the performances of his works recorded during the year, having due regard to the length and nature of each particular work; and the revenue available for distribution, after deduction of administration expenses, is then divided amongst the members, in proportion to the performances standing to the credit of each. The work is under the supervision of the Distribution Committee of Directors, consisting of composer, author and publisher members of the Society, and a statement showing the amount of fees, credited to each member, is submitted for members' inspection prior to the Annual General Meeting each year. In the case of broadcasting fees, these are divided according to the duration of performance of each work, as shown by the official programmes furnished to the Society by the British Broadcasting Corporation, and are distributed half-yearly, a detailed account being sent to each member showing how the amount paid to him is calculated.

The accounts of the British Society are audited quarterly by a firm of Chartered Accountants, and submitted to an Annual General Meeting

of the members. The ratio of administration expenses to its total income for the financial year, ended 5th January, 1930, was approximately 14½ per cent.

Of the total net revenues of the British Society, one-third is distributed amongst the authors as a class, one-third amongst the composers as a class, and one-third amongst the publishers as a class.

(6) *Attack on the Canadian Society:*

Mis-statements, circulated throughout Canada, have seriously obstructed this Society in its endeavour to collect the fees to which its members are entitled. The music users are not content with the vast amount of music in the public domain, and which is available to all, free of charge. They prefer modern popular copyright music, but do not wish to pay for their preference.

Music users have said that if Canada ratifies the Rome (1928) Copyright Convention, the Canadian Performing Right Society would take advantage of the terms of that Convention to make an arbitrary use of its right to collect royalties from all who play or sing, in public, music of which it holds the copyright. There is no justification whatsoever, for this fear.

It has been argued that in the public interests this Society's tariffs should be subject to Government regulation. Although such regulation would not in any way benefit the public, but only the music users, these demands have found expression in Bill No. 4, An Act to Amend the Copyright Act, now before Parliament.

Government regulation of the Society's tariffs would be a gross violation of the authors' right to freedom of contract. Similar attacks have been made on the Performing Right Societies in many other countries, including Great Britain (the notorious "Tuppenny Bill" of 1929) and the United States of America. All of these attacks have completely failed.

In memorandum "C" herewith, the Society sets out its objections to the provisions of Bill No. 4.

Undoubtedly, Bill No. 4 is an attack on the authors' right to associate for the protection of their property. It is said that the proposed legislation is not intended to restrict the individual author but, as has been pointed out, the author cannot protect efficiently the copyright in his works except in association with other authors. Legislation to the prejudice of an author's assignee or duly appointed agent prejudices the author himself.

The Canadian Society is being operated on the British system. Of the net revenues of the Canadian Society, 50 per cent are payable to the British Society and 50 per cent to the American Society.

(7) *Society a Great Convenience to Music Users:*

The Authors' and Composers' Association is a great convenience to music users, who can obtain from it permission to perform any of the works in the joint repertoires, thus saving music users the trouble of obtaining permission from the individual author or publisher in respect of each work that he wishes to perform in public.

Also, the work of collection is facilitated and much more economical, making possible very low licence fees.

Royal Bank Building,
Toronto, 10th April, 1931.

I might amplify that. We are operating on the program system and keeping a record of the performances and the work, and our fees will be divided up and distributed on the basis of the performance.

The CHAIRMAN: I was wondering about memorandum "C" That is largely legal argument. It is not a matter of evidence. I think that can be filed as a brief for consideration when the legal question is taken up.

Mr. CHEVRIER: Yes, unless they have any new material that they would like to put forward.

Mr. JAMIESON: This is our case against the Bill.

The CHAIRMAN: It is your argument against the Bill.

Mr. JAMIESON: This statement "C" contains the various arguments, which, in our opinion, show the impracticability of certain of the proposed—

The CHAIRMAN: Quite so. I would file this as a brief. If your counsel later, at the conclusion of the taking of the evidence, wishes to present a short oral argument on the legal aspects of it, I think the committee will hear him.

Mr. ANGLIN: May I venture a word, Mr. Chairman. I have read memorandum "C", as doubtless you have, sir. It is certainly a mixture of statements of fact and something in the way of argumentative discussion of those facts, which would certainly sooner or later come out, whether it happens now, or when the committee do me the favour of hearing me.

The CHAIRMAN: I have read it through. I do not see a single statement of fact that the witness could give of his own personal information which is contained in this memorandum "C". It is a very proper argument for counsel to submit, as argument or brief of counsel, and I think it should be laid upon the table and subject to later comment when all the evidence is in.

Mr. ANGLIN: Then I suppose if that is the ruling, what Mr. Jamieson would have to do,—because he contemplated reading it and commenting on it as he went along—would be to more or less follow through this statement—

The CHAIRMAN: If there are any statements of facts contained in the Memorandum "C" to which the witness wishes to refer, all well and good, but I do not intend to hear argument from the witness at the present time.

By Mr. Irvine:

Q. May I ask you one question at this point. In the last statement which you have just read, Memorandum "A", it is stated that the Bill restricts the right of associations. Is there any specific clause in the Bill to which you refer that does that.—A. Yes, section 10 of the Bill.

Q. That is, by implication you mean it does. It does not definitely restrict associations, it restricts what the association shall do.

By Mr. Ernst:

Q. You mean it would hamper you in your work to such an extend as to restrict your association.—A. Yes.

Q. Rather than in expressed terms.—A. Yes.

Mr. CHEVRIER: Supposing the witness takes the various sections, section by section, if he has anything to say on them.

The CHAIRMAN: I have no objection to that.

By Mr. Chevrier:

Q. Take the first section to which you are opposed, tell us what your objections are to that.—A. If I may just traverse this statement "C" sir, and state our objections, because they are here very much shorter than if we enter into a discussion on them.

The CHAIRMAN: Make a short statement of your objections, because we do not want to get into a lengthy discussion at the present time.

The WITNESS: As to section 5, that is, the section which deals with the author's right to restrain acts projudicial to his honor or reputation, we feel that the word "publications" as defined by the Act would include gramaphone records or other mechanical contrivances.

By Mr. Ernst:

Q. Will not include.—A. It would.

By the CHAIRMAN: You would like the word "publication" left out, or you would like such words as provided restrictions of publication put in.—A. We feel that it should read, instead of publication, "the right to restrain printing, publication, representation or reproduction".

Mr. ANGLIN: I would suggest a further word there "performance." If one is going to have a string of words, then we had better have them all.

Mr. ERNST: Take a gramaphone record, for instance. You want to control the production of that record in public and collect licence fees.—A. It is just as regards mutilation of the work to be protected as against mutilation by publication, but not protected against mutilation by printing and reproduction.

By the Chairman:

Q. What you say is this: You wish the word "publication" struck out altogether; or if an attempt is made to define the use of such words as "the publication of," you wish some other words such as "production, reproduction, printing"?—A. Yes, we wish that word enlarged.

The CHAIRMAN: We understand that for the present.

By Mr. Chevrier:

Q. Your objection is to the word "publication"?—A. Publication.

Q. The word "publication" is too narrow and does not restrain the mutilation in any other respect, publication does not extend far enough?—A. That is so.

Q. Because it is defined by the Copyright Act now.—A. But if it brought it under any distortion—

By Mr. Irvine:

Q. It would be all right.—A. We want to be protected against distortion, mutilation or other modification. Publication, I believe, is defined as the issue of copies.

By Mr. Chevrier:

Q. Yes. In other words, your objection, as I have it, means subsection 2 of section 3 of the Copyright Act. "For the purposes of this Act, 'publication,' in relation to any work, means the issue of copies of the work to the public and it does not include the performance in public of a dramatic or musical work—" —A. Yes.

Q. Leaving the section as it is now, it does not apply to the performance in public of dramatic or musical work; that is what you mean?—A. That is so, yes.

Q. That is what you want to have remedied?—A. To have that remedied.

Q. Otherwise you can mutilate dramatic and musical works, or you can distort them?—A. Yes.

Q. If this section goes through as it is?—A. Yes. We wish to be protected against all mutilation.

By Mr. Ernst:

Q. Before a dramatic work may be performed it would have to be published, would it not?—A. Not of necessity, no.

Q. If you had the right to it?

Mr. ROBERTSON: Many dramatic works are—

Mr. CAHAN: Now please, Mr. Robertson. You will have the opportunity to give evidence before this committee. You are not a member of this committee.

Mr. ERNST: I am looking for information myself.—A. Are you asking, whether, in order to perform a work, it would have to be published?

Q. Yes.—A. No.

Q. Would it not be "publication" if it were in printed form and handed out or in typwritten form and handed out, but not printed in the ordinary sense of being distributed to the public?—A. Well, publication is defined in the Act—I can refer to the Act—publication is defined by the Act, and it is not very broad,.

By the Chairman:

Q. It is perfectly clear that in regard to section 5 objection has been raised and the committee will consider it in so far as I am concerned, in view of the arguments that have been made. What is the next, Mr. Jamieson?—A. Shall I proceed?

Q. Yes.—A. In regard to section 9, this section is registration of assignments, grants and instruments. It replaces section 40 of the Act under which we have experienced considerable difficulty by reason of the requirement that in registering we must produce duplicate originals of our works and must register in order to maintain an action in court. We submit that while this section, that is, section 9, does make registration optional and therefore does not impose the formality upon the acquisition of the right, it deprives an unregistered assignee, grantee or licensee of all remedies where has been a registered assignment taken in good faith. The grantee or licensee who is thus deprived of this remedy is and remains the owner of the right but is, in the circumstancoes contemplated entirely without remedy. Once an assignment has been registered, even though it were made in fraud of the real assignee, he can no longer sue for infringement, any person—whether claiming under the registered assignment, or a complete stranger to it—

The CHAIRMAN: He can. He certainly can remove the particular record of registration by action in the court.

Mr. ERNST: If it is not made with notice.

The CHAIRMAN: By fraudulent means.—A. Because the infringer can put the real assignee's title in issue and defeat it by reference to the registered title.

The CHAIRMAN: I think you are speaking generally as to the working of the clause. That can be left until later when your counsel argues the case.

Mr. ERNST: The practical effect of the section is to compel the registration of the two sections, is it not? You lose your rights if you don't.

Mr. CHAIRMAN: No.

Mr. ERNST: You can't collect fees?

The CHAIRMAN: Yes, you can. What that clause is intended to effect is this. I have ascertained from matters brought to my knowledge in the State department that many Canadian authors have made assignment of their rights to copyright to United States' publishers, and incorporated in those assignments which were made in the United States, there is a provision which is as wide as the continent, giving to the publisher in the United States, copyright over the territory from the Gulf of Mexico to the northern settled parts of Canada. Such authors, without knowledge that they had conceded their rights by such

assignment to publishers in the United States, and thinking that they only made the United States assignees of territorial right confined to the boundaries of the United States, have, in Canada, subsequently and sometimes previously, made assignments of their rights to copyright over the territory of Canada; and there are two conflicting assignments. Now, this is intended to provide that, where there are conflicting assignments such as those, the one who registers first, shall be deemed to be the lawful assignee so far as the Canadian public are concerned. Of course, if any other assignee desires to contest that registration, he is in a position to do so.

Now, that clause was intended for that purpose and provided for that purpose.

Mr. CHEVRIER: There is this feature about it, which we can discuss later on. It would only apply to nationals; it cannot apply to unionist authors outside of Canada.

The CHAIRMAN: Perhaps not, but I think it can.

Mr. CHEVRIER: I don't think so. We cannot legislate with reference to unionist authors. If they have unionist authors in the repertoire, it cannot apply to them. That is the difficulty.

Mr. CHAIRMAN: That may be an argument.

Mr. CHEVRIER: You can do what you like with your own nationals—we can come to that later—but you cannot apply it to unionist authors according to the terms of the Berne convention.

The CHAIRMAN: I am not going to argue that now. I have submitted that clause to very competent authorities, and they inform me that it comes within the terms of the Berne convention.

Mr. CHEVRIER: So far as nationals are concerned, we can use them in any way we like.

The CHAIRMAN: I think it goes further than that.

The WITNESS: We gathered sir, that was the intention of the clause, but we feel that the intention is perhaps doubtfully expressed.

By the Chairman:

Q. Quite possibly.—A. If the section defeats only the non-registered assignment, only as against those claiming or justifying under a registered assignment, there would be less objection to it.

By Mr. Chevrier:

Q. What did you say?—A. I say that the section would be far less subject to objection if it referred to non-registered assignments only as against those claiming or justifying an unregistered assignment.

By the Chairman:

Q. How much less?—A. Well, it seems that once an assignment has been registered, even though it were made in fraud of the real assignee, he can no longer sue for infringement, any person—whether claiming under the registered assignment, or a complete stranger to it.

The CHAIRMAN: He can set aside registration in our courts.

By Mr. Ernst:

Q. The section is analagous to so many we have. For instance, the collection of fees is somewhat similar.

By the Chairman:

Q. Any fraudulent registration may be set aside; there is no doubt about that.—A. We feel there is a doubt, and there is the difficulty. We don't see that it is clear how we are to expound that.

The CHAIRMAN: I think we must leave that to Mr. Anglin to discuss.

By Mr. Ernst:

Q. Do I understand, Mr. Jamieson, that one of your chief objections is the indefiniteness of the registration?—A. No, it is—

Q. Not set out clearly, perhaps?—A. Not too clearly and authors and artists say, "under the protection of rights, we cannot enforce this right."

Q. You also stated the fact that it would entail a good deal of expense with your three millions works?—A. Yes.

Q. I notice a paragraph to that effect?—A. There is that aspect, of course; registration is expensive.

By the Chairman:

Q. Are there any other objections? I understand your objections to section 9, in a general way, and much remains for argument by counsel. I presume you object to section 10?—A. Yes, we object to 10. Section 10, we submit, is not only impractical, but would be contrary to our International convention, inasmuch as it would be a "formality" with the meaning of the Convention. It appears that the compulsory filing of such lists is to be a condition precedent to (*a*) any legal proceedings to secure payment of licence fees, and also to (*b*) the collection of any such fees, apart from legal proceedings to secure their payment. Assuming willingness for voluntary payment of fees, a Society or Association would be debarred legally from accepting or collecting them, unless all the works performed by the licensee, were included in the lists filed at the Copyright office. The position, in this respect, would therefore be similar to that at present obtaining under section 40 of the Act. The necessity for the repeal or amendment of section 40 in order to bring Canadian Law into conformity with the Convention, has already been emphasized, but the Canadian government in imposing such formalities, as are indicated in their present proposals, would still be legislating in a manner contrary to the Convention.

By the Chairman:

Q. That is a matter of opinion on your part, of course?—A. Yes. Even if the filing of such lists were voluntary and not compulsory, a Society or Association would still be placed in the position of being unable to sue for, or to collect, licence fees in respect to performance of any works which may not appear on the filed lists.

Q. That is argument.—A. Not all together, sir. The class of persons to whom this section applies is by no means confined to such entities as the Performing Right Society, but would embrace every firm or company of book, play, and music publishers, or literary agents, carrying on business in Canada. Their business is to acquire copyrights or separate interest therein or, in the case of literary agents, to grant licences to perform. It is submitted that in these days, when the filming of novels is perhaps the most valuable of all rights, no one within the class could afford to disregard this section. They would, therefore, have to furnish periodical lists of their publications and, with reference to section 1 (*b*) at the same time they would have to name the price of the licence, and to do so before they could possibly analyze the success of the work, or the other factors which should govern the price. And since the section—

Q. How do you require that?—A. Well,—

Q. That you have to state the price of the licence. That is clear, but to do so before you can possibly know the success of the work or other factors which should govern the price?—A. Yes. A popular work—

Q. Do you find anything in that section which prevents the society publishing from time to time the prices or from increasing or lowering them.—A. Well—but one work may be all right and another may not.

Q. Quite so, but we are dealing with a particular work.—A. But until you know what is the value of a work, whether it is a good work or bad or indifferent work, you cannot put a price upon it.

Q. You cannot put a price upon it?—A. Not very well.

Q. Are you dealing now with publishing?—A. I am not dealing with that question at present.

Q. Are you dealing with performing rights?—A. I was dealing with a case of the filming of novels.

Q. That is apart altogether from your sphere, is it not? Let us deal later with that. We have a publisher's or a filming agent here.

By Mr. Chevrier:

Q. How does this section interfere, if it does interfere, with your performing rights? As I understand it—you deal only or practically with music?—A. Yes.

Q. Musical rights?—A. Yes.

Q. How does this interfere?—A. Well—

Q. How does it interfere, if it does?

The CHAIRMAN: That is what we must know.—A. To file those lists— the problems encountered filing those lists are very great. First of all there is the filing of lists, which would entail an enormous amount of labour—

By Mr. Chevrier:

Q. My question is, suppose I write a song and turn over my performing rights to you?—A. Yes.

Q. And then, according to the section above you would have to register it, and somebody came along and wanted to play my song—it probably would be poor taste on their part—now would you go about it in order to determine at the moment of registration, the value of that song, when somebody came along and asked to play it?—A. How could we?

Q. I don't know.—A. We have to find out where and how often you are going to perform that song. You might want to perform the song to ten people or to a thousand people, or to tens of thousands of people. You may want to perform it once, and you may want to perform it a hundred times.

Q. As I understand it—I don't think you understood me—the impression I got from that is that you connot determine the value of that song until it has been played some time; is that so?—A. You are asking how we determine the value, the price?

Q. I want to know how you proceed to put a value down in the filing book as to what my song would be worth, two dollars, fifty cents, or ten cents or what? —A. What I am saying is, it would be impossible to do that unless you told me how and where, how often you are going to perform that song.

Q. This is my song. You are saying if somebody wanted to use my song. I am asking you how you are going to fix a price on my song and put it in the record book.—A. I have to get the music user to find out how and where and to whom he is going to perform that song. He might perform it to a small audience or he might be broadcasting your song to hundreds of thousands of people.

Q. Then, your difficulty is you cannot determine the value of my song when you register it in the lists?—A. The music dealer cannot tell what use he is going to make of it.

Q. That is my contention.

Mr. GUY: I wonder if I may be pardoned—

The CHAIRMAN: No. There will be ample opportunity for you.

Mr. GUY: I am very much interested in this examination.

The CHAIRMAN: I suppose you are, but there will be ample opportunity to express your views. This witness is giving evidence on oath.—A. Well, our practice is to offer our licence to perform any or all of our songs in the musical

books in our repertoire at an annual licence fee; and it of course, is under the protection of the music user. The music user himself does not know what music he is going to perform; he may be asked to play some encore, and he may be out somewhere in western Canada, and he cannot get in touch with us at a moment's notice in order to get permission to perform any particular work.

Mr. CHEVRIER: I gathered that. That is the point I got from the evidence. I don't know whether I am right or not. That is the objection I took.

Br. Mr. Ernst:

Q. I am not quite clear on it yet. You have, have you not, Mr. Jamieson, a schedule of fees whether they are used for any particular performance or not?—A. Yes.

Q. You have that to-day?—A. We have to-day a tariff for the general licence, general right to use our licence.

Q. According to the class of performance?—A. Class of performance.

Q. Granted accordingly as to whether you use all your songs or some particular ones?—A. All of the songs.

Q. Do you not grant licences for particular songs?—A. We do take them that way. We always have been and are willing to collect for a few songs.

Q. Let me carry you a step further. You fix a price according to the type and class of the entertainment, do you not?—A. Yes.

Q. I mean, whether it is for a single entertainment or for a number of entertainments?—A. Yes.

Q. Even if the single performance took place in some place like Albert Hall, England, or in a village school?—A. The size of the audience is a factor.

Q. You have a tariff of fees to-day?—A. Yes, we have a tariff of fees.

Q. Well then, what is the objection to filing those?—A. We will file our tariffs on general fees for the general licences, but we cannot file tariffs of the individual fees for the reason that it would run into hundreds of millions, the prices.

Q. In other words, every song has a different price on it?—A. Well, every song has a different price according to where it is used.

Q. Do not the songs group themselves naturally into a number of groups which would have similar prices for similar performances?—A. Well, you have, we will say, seven different groups.

Q. Yes?—A. Radio and dance halls and exhibitions and fairs and so on. The practice in each group varies. You may want to perform it to ten people or a thousand people or more. So, you see the variation.

Q. You have groups and classes such as radio and so forth?—A. Different classes and different extent of use comes in each class.

Q. Fixed by the number of people who would be likely to be in attendance? —A. So for each song you would have to have fifty prices?

Q. Now, every individual song of your three millions does not have a different price, does it?—A. We have.

Q. Would you not have a fixed price?—A. No, we have not attempted to do that.

Q. Have not standardized them?—A. We have three million works to start with.

Q. Don't you standardize your groups?—A. For each song?

Q. No. If I came to you and took a particular song out of your list for a particular performance—A. Yes, if you came to us and said you wanted a particular song we would ask you how you proposed to perform it, are you going to perform it in small concert hall?

Q. I understand that.—A. We would charge you so much, probably a dollar.

Q. My point is this, would it not be the same no matter which song I took for that particular performance?—A. Generally speaking, yes, but there are of course different classes of fees, some are larger fees and some are smaller.

Q. How many different classes would you have?—A. Well, there are a great number of classes; I am afraid I cannot recite them to you.

Q. Do they run over the hundreds?—A. No—I am afraid I cannot answer that from my own knowledge.

Q. You have a hundred classes of those one hundred groups of songs?—A. Yes.

Q. And then you have fifty different prices, according to the classes?—A. Of the song.

Q. For each song you have say 5,000 in your schedule of licence fees?—A. No. This section says we shall file for each work, the price for each work and we say that 50 times two million is one hundred million prices.

By Mr. Irvine:

Q. Cannot you attach to a specific work the price class in which you put it? It seems to me you could say "class A, class B,"?—A. That may be done, but it would entail an enormous amount of labour in going over 3,000,000 works in order to classify them.

Q. I think you must do that to-day or you would not be able to fix the price.—A. No, we don't need that; we have a right to use the whole repertoire and the general right to use the whole repertoire.

Q. I am asking you about the particular rates. You must have them. You don't arbitrarily fix the price for each individual case, you must have some definite system?—A. It is very seldom that we are requested to give any licence for an individual song, very seldom indeed.

Q. When you are requested you simply fix upon an arbitrary fee, do you? You have some definite system which applies to all songs, all groups, everything?—A. Well, we have to arrive at what we consider would be a fair—

Q. You do it by some system, surely, not purely arbitrarily?—A. Of course you have to take this into account. Up to date, the situation in Canada has been that lots of people have been playing, running around like little boys with their finger in the jam jar.

By the Chairman:

Q. You wish to get in the jam jar now?—A. We have been scolding them a little bit, and now they are rather angry with us because we have been doing so, but sooner or later I think perhaps they realize that we are quite willing to engage with them, and we will be able to reach terms in this matter. At present I think you can get more information from the British and American societies because they have had more experience in this licencing matter than we have here in Canada. People have not been coming to us at all. They simply have been saying to us, "we are taking the right to put our finger in your jam jar and do what we like." They have done what they liked.

Q. If my interpretation or construction of this bill is correct your rights are thereby preserved to an extent that they have never been preserved before in Canada, and the sole object of this clause No. 10 is to determine to what extent you may be regulated in the use and exercise of your price fixing rights—

Mr. ERNST: Is it not a fact that in time you are going to have a practical monopoly of any work to be performed—any modern work?

WITNESS: No, I do not admit we have a monopoly.

By Mr. Ernst:

Q. You probably aim for it?—A. No, we do not aim for it at all. We simply take the works of such members as join us and we operate on those. We are not aiming for a monopoly.

Q. Let me put my question in a different form. I did not mean it in any nasty way. But the more profit you make for people who join, the more likely they are to join?—A. No, that is not right. I think you have the wrong idea. We are an association. We are a collection machine, if you like and we are available to any author. He can come to us and simply say, "protect our rights." A hundred may come or a thousand or ten thousand, but there is no invested capital or anything of that sort; it is simply an agency. There is no one who can benefit by saying, "let us get in everybody" rather than only—

Q. Only the members of your association, as such, individual members—

Mr. CHEVRIER: I would like to get your point—just what you object to. Subsection B, "a statement of all fees, charges or royalties which such society, association or company proposes to collect in compensation for the issue or grant of licences in respect of the performance of each of such works in Canada," now, is that what you object to—the registration of each one of these. What do you suggest?

The CHAIRMAN: Supposing we change the word "each" to "all" or "any."

Mr. CHEVRIER: All such works with reference to which they want to claim royalties. Then the question is how will they anticipate what the public users want to ask of them. That is the objection that is put forward. They have a million works.

The CHAIRMAN: I think I could answer that: until the day that they wish to put out the performing rights in this country at a certain price, their statutory rights, their property rights will not be interfered with. All this section says is that from time to time they shall file those for which they have fixed fees and propose to collect fees. The next day after that, or a week hence they can file additional statements. If there is any doubt about that—

Mr. CHEVRIER: That places a different construction upon the meaning of the section. If that is the intent that is different. If that intent was made clear it would help a lot. However, it is their case.

WITNESS: In regard to that, Mr. Chairman—

The CHAIRMAN: That is why I dislike to go now into a legal argument as to verbiage. I would like to have the evidence, and we will discuss the form.

Mr. CHEVRIER: If they could give us the objection. How does it interfere with your objections?

WITNESS: We cannot tell in advance of the application what is to be the use of the work. It is impossible. We may have a number of radio broadcasts. It might be fifty-watt station or a fifty thousand-watt station, and they must apply and say what is to be the degree of use.

By the Chairman:

Q. What is to prevent you saying to a broadcasting station, we will charge so much if your station is fifty watts and an additional percentage for every excess of watts used? No monopoly can exist except it has some responsibilities with respect to the public imposed upon it. You must at least be in position to state the broad outlines of the charges which you wish to collect from the public?—A. We do know what charges we wish to collect from the public; that is, we have our general tariffs, but our experience has been in countries where the performing rights societies are operating, that the public want the general licence and a simple way or working.

Q. Assuming that, what objection is there to filing those tariffs which you already have?—A. We can, Sir, and I shall file our tariffs.

Q. Will you file them before this committee? Let us have that understood?

Mr. CHEVRIER: The witness will produce existing tariffs and file copies?

WITNESS: Yes, we have them here, but I say it is impossible to file a list of the prices that we would charge for individual works or groups of work ahead of time until we have the application.

By the Chairman:

Q. Assuming that there is no such thing as filing ahead of time, assuming that you can change from day to day by filing lists of additional works and also by filing the statements of fees or charges which you will collect in respect of the Performing Rights of these works?—A. Well, we see, Sir, the great difficulty in filing prices for individual works. The volume of work will be tremendous.

Q. Will you please proceed?—A. If I might just sum up by saying that in view of the fact that it is not the general practice of the society to grant licences for the performance of special works, it is unnecessary to file a statement of fees for the performance of each work. Moreover, it is impracticable at the time of publication of a work to fix a performing right fee, which would be appropriate for every class and number of performances.

Q. That is not an objection under this bill, because you are not required by this bill to do that thing against which you raise objections?—A. I see.

By Mr. Ernst:

Q. Does that complete your objection to section 10? A. No, Sir, we have been dealing with section 10, 1 (a) and 1 (b). I am glancing at my notes. Sections 10, 2 and 3. Now, I see with regard to the so called monopoly charge—

The CHAIRMAN: There is no monopoly charge here is there? Let us deal with the sections of the bill. There is no monopoly charge.

WITNESS: There is an impression that there has been some talk of a monopoly.

Mr. ANGLIN: We might leave this question of monopoly for reply, if it is charged.

Mr. ERNST: I was asking for information whether it would tend towards that end.

Mr. ANGLIN: Until there is some evidence we should leave it for reply.

By Mr. Irvine:

Q. I think you have objection to section 10-2 on the ground that the Governor in Council should not regulate fees charged. Have you any objection to that?—A. Yes, we take strong objection to that. We feel there is no reason why we should not fix our fees ourselves, and in every other country we have proved ourselves quite able to close on reasonable contracts with all and sundry much better.

By the Chairman:

Q. But not without grave objection from the public?—A. I would not admit that, Sir.

Q. I said that—although I am not giving evidence—because nobody can read the proceedings before the committee of the British House of Commons and the discussion in the House of Commons of recent date in England without noting that there are very grave objections?—A. Mr. Buck and Mr. Hawkes will be able to speak with first hand knowledge of that.

Q. Let us deal with Canada?—A. It is my understanding that we have always been able to arrive—to engage in contracts with the various parties who wish to use our material, and we feel we could do the same here, and, in fact, we have done so.

Q. When you have done with your objections, I would like to ask you some questions with regard to the general scope of these objections?—A. I was, Sir, passing on to section 11, that is, performances by churches and colleges. I say that it has been our policy always to extend sympathetic treatment to performances given for such purposes as are mentioned in this section; but we feel that it will be a violation of the rights—the authors' exclusive right, and that the author should have, should continue to have the right to authorize the performance of his work under such circumstances. At the same time, free use of the societies right is granted for charitable entertainments provided that no payment is made to the performers. We are perfectly willing to take nothing if everybody else is willing to take nothing, but the idea seems to be that the author and composer is to do all the giving and everybody else can get the reward for their labours.

By the Chairman:

Q. Now, let us deal with that objection. We have to understand the objection because it is very pertinent. You said you have no objection to the free exercise of performing rights in a musical work for charitable purposes so long as the performer—the one who sings or plays—does not receive compensation for the performance. Is that so?—A. There might be a charity concert organized and they might have to pay the artists, or somebody who is organizing the charity concert, and we say if everybody is giving their services to charity, then it has always been our practice to do likewise and to grant free use of our repertoire.

Q. Everybody is a wide term. You have to pay the newspapers for advertising and the printers who print the hand-bills and the attendants who arrange the seats?—A. Yes, they use this as a reason personally to discriminate against the authors as a class. If other people who are contributing to a certain charitable or benevolent concert are giving their services free, we can do likewise, and we have done it.

Q. Where do you draw the line? You say everybody. Does that include the charwoman who dusts the seats and who scrubs out the building? Where is the line there?

Mr. Ernst: Is not the real point here: if the performers give their services voluntarily you really would have no reasonable objection to not being compensated for your music under the circumstances. If the performers are paid for performing that music, then the author ought to be entitled to something. That seems to be your point.

Mr. Irvine: The institution in connection with which the performance is put on might be making profits both out of the gifts of the performers and of the author. You have to go further than the performer. So far as the present performance is concerned you might organize a big performance and get all the performers to donate their services, and the authors to donate their songs, and then make money.

Mr. Chevrier: That is what happens often.

The Chairman: The popular objection indicated to me in regard to this matter is this: in the country district where I was born there were times in the early days when we were out of communication with the outside, and in the winter we have very little communication by sea in stormy weather. We used to have community centres. We would have a village band or town band or a village choir. These were for our own amusement and entertainment during the winter season when we were practically cut off from communication with the rest of the world. We would have musical entertainments. The children would pay fifteen or twenty-five cents and the adults would pay twenty-five or fifty cents, and the proceeds went to sustain either the village church, the com-

munity hall or some other community interest. Now, in respect of such an entertainment where an entrance fee is charged, you would, according to your definition, insist upon payment for the performing rights of any work in your repertoire.

WITNESS: Well, sir, I am not going to hold on to the case of the charwoman. We do say that if the promoters are not receiving remuneration and if the performers are not receiving remuneration, that it is our practice always to grant the right—we grant the right freely to use our repertoire; but we wish to have the right to grant that right. We do not see why it should be necessary to take away that right from us. We have never charged churches. There have been a lot of misstatements—

By the Chairman:

Q. Unfortunately, under existing conditions you cannot charge anyone very much?—A. Quite so. I am speaking now—and Mr. Hawkes and Mr. Buck can speak and tell you of our practice—because their policy largely governs and will govern the administration of this society in Canada because they are the property owners. They own the Canadian performing rights. But I simply say that it never has been the practice to charge charities of churches, although there have been lots of grave misstatements made here and there throughout the country that we do this sort of thing. But we do not; it has never been the practice; and we do not charge His Majesty's Forces for service performances.

By Mr. Ernst:

Q. Nearly every city choir has paid artists?—A. If a great band from London comes to an exhibition and is paid some thousands of pounds to come out here to the Canadian National Exhibition, deriving huge payments from the public, and if they say "we are not going to pay you a fee" which in that case would amount to something less than one thousand dollars for the whole period of the exhibition—

By the Chairman:

Q. Do you include church choirs? In the cities most of our modern church choirs are paid annually? Would you insist upon charging the churches?—A. Oh, no, Sir.

Q. For the use of copyright music?—A. No, we have never insisted.

Q. Simply because the performers were paid?—A. No. It is very difficult to draw the line that you ask; but we do the thing in general; and if we find that those who are able to give their services freely are not so doing, that they are profiting out of the thing, then we ask that our licence fee be paid. But take charwomen and choristers they are not able to give their services freely.

Q. Some of the artists who sing in our choirs are very well paid?—A. I think perhaps the answer is that we wish to control the giving of our own charities.

Q. I think that is a fair answer. You wish to have it entirely in your own control without any interference on the part of parliaments and governments? —A. Yes, we do not see why we should be forced to give—

Q. Quite so?—A. And if we are to be forced to give, why, everybody else should be.

Q. I think that is fair.

By Mr. Chevrier:

Q. Supposing that Creatore plays at the Central Exhibition Fair in Ottawa, will you charge anything for the use of that music?—A. Our practice is to charge the exhibition.

Q. Under this act here, what would be your situation if this goes through? —A. Well, we would still charge the exhibition.

Q. But, under this act, that may be a question of interpretation?—A. Yes, a question of interpretation.

Q. And from that you gather that that would prevent you from charging fees on the music that Creatore might use in Ottawa or in Toronto at the Exhibition?—A. I did not say that.

Q. What is your understanding?—A. My understanding——

Q. If one fair has the privilege of using it. That is what I want to get at. I want the purport of this?—A. It is a question of what is educational.

Q. What is educational? If the fair in Ottawa or Toronto has a certain number of educational features in it, though it is largely advertising, then this defeats the purpose—you cannot collect royalties?

The CHAIRMAN: I am afraid that is coming, because an amendment will necessarily be proposed either in this committee or in the House with regard to fairs and exhibitions. I do not think there is a Fair Committee throughout Canada that has not entered some objection.

Mr. CHEVRIER: I have had the same deluge of circulars. "Provided the performance is given for religious, educational, benevolent or charitable purposes." That is why those fairs are all claiming exemption and free music.

Mr. ERNST: They are all asking for an amendment?

Mr. CHEVRIER: Some of them have written to kill the bill in order to get free music. If you kill the bill you cannot get this.

The CHAIRMAN: Could we not argue that when we come to re-draft it?

Mr. CHEVRIER: If it is going to be re-drafted. Now, dealing with the term "religious." A man writes a new mass for religious service, and the church can use that without any fee at all. I do not think it is fair to the man who goes out and spends a lot of time and energy in studying ritual and lithurgy, and the church should be able to use his sacred music without paying for it. He has got to make a living whether it be hymnal or church music.

The CHAIRMAN: Don't you think that is an argument that goes to the bottom of the whole thing, and should be reserved?

Mr. IRVINE: I think we can argue that when we come to the clause.

Mr. CHEVRIER: I want to get the information.

The CHAIRMAN: It is not a question of information you are getting from the witness, it is information you are supplying to the audience.

Mr. CHEVRIER: If that is one way to get it on the record I am quite willing to do it.

The CHAIRMAN: We will have no difficulty in getting information on the record. You are a member of the committee and of the House of Commons. The House of Commons is established for the purpose of discussion, and this committee is established for the purpose of obtaining evidence to form a foundation therefor. We are going to the extreme in the matter of allowing these objections to be stated in this form by a witness who is giving evidence on oath.

The WITNESS: I propose to file, Sir, a copy of a pamphlet widely circulated by us and which gives excerpts from our membership and shows the extent of the repertoire. It indicates the extent of the repertoire.

By the Chairman:

Q. Have you a printed copy?—A. Yes, I have it here. I will file it.

Q. Let me see it. I don't know whether I want to file it. Printing is expensive. We will accept this, and if the committee decides that it should

subsequently form part of our printed record well and good. It will be here for the examination of the committee, but we must shorten the record somewhat.—A. That list, Sir, is what we use to indicate the extent of our repertoire, and we feel it is all that is necessary and obvious——

Q. I will examine you later. What else do you want to volunteer?—A. I will file these particulars of our tariffs now in existence.

Q. Is this the same tariff that you gave me a copy of, or is it a new tariff? —A. No, Sir, if I gave you a copy it is the same.

Q. Have you changed them recently?—A. No.

The CHAIRMAN: We will file the list of the tariffs.

The WITNESS: In filing this I may state that this tariff will have to be revised. In the event that the society was put to the expense and trouble that would be caused by the proposals of the amending bill as to filing lists, tariffs and so on, the expense would be very great.

The CHAIRMAN: There is nothing in the bill to prevent you revising your tariff from time to time subject to certain supervision.

(List of Tariffs filed marked Exhibit "C").

The WITNESS: Just in regard to contracts. The society has always offered licences for work performed where such licences are desired, and we call those contracts Unit Charge Contracts, and at different times throughout the past few years where a music user has objected to taking the general licence and has said that he wishes to pay only for what music he is using, we have offered him what we call a Unit Charge Contract, that is, a charge per work, and it depends, of course, upon the size of the work and the length of time taken as to what the charge will be.

Q. Let me ask you a question. Your company, the Canadian Performing Right Company Limited, as you stated, is organized by Letters Patent issued under the Company's Act of Canada.—A. Yes, sir.

Q. Its capital consists, if I remember correctly, of 6,000 shares no par value.—A. Ten thousand shares of no par value.

Q. Ten thousand shares?—A. Yes. That is the authorized capital.

Q. Well, how much has been issued?—A. We have issued 2,000 shares.

Q. Two thousand shares?—A. Yes.

Q. And of those 2,000 shares actually issued I understand that 1,000 shares are owned by the Performing Rights Society Limited, of London, England, and the other 1,000 are owned by some American society.—A. Yes, the American Society of Authors, Composers and Publishers. Each have one-half of the issue of stock.

Q. Each have one-half of the issue of stock?—A. Yes.

Q. So that none of those shares are owned by any Canadian company.—A. No, sir.

Q. In the collecting of tariffs and charges up to date you have been very much restricted, I understand, by the application of the present section 40 of the Copyright Act.—A. Very much.

Q. That necessitated as a condition for registration the execution of assignments in duplicate, and you found it absolutely impossible to conform to that requirement.—A. We did, yes.

Q. You carried an appeal from the Ontario courts to the Privy Council and the Privy Council decided that section 40 as it at present exists was binding upon your company.—A. Yes.

Q. And your company is very desirous of having some amendment made to that section 40 so that you can comply with it with reasonable expense.?—A. Yes.

Q. Now you object to any degree of governmental regulation in respect to the tariffs which you fix, impose or collect.—A. We do.

Q. You do not find anything in this Act which prevents the individual author from collecting by himself or agent, any tariff or fees that he might seek to impose.—A. No, sir, but the individual author may be in Czecho Slovakia, or Austria, or France, or Britain, or Germany, and he cannot come here and collect himself.

Q. Quite so, but there is nothing in this Act that prevents him collecting, as they have done in times past, their fees and charges by an agent through our courts.—A. Authors—

Q. Will you please answer that question?—A. No, there is nothing.

Q. That is what I want, not an explanation?—A. Except that it is impossible for him to do it.

Q. I do not know what you may argue, but I don't know that you are in a position to give evidence as to it.—A. If I may make a suggestion there, sir, if you take an author in France he would then have to appoint agents in every part of the country, and he could not afford to do that sort of thing.

Q. Perhaps not, but I know that in my practice, as a member of the late firm to which I belonged, we were agents for collecting for many authors, and we had a young man in the firm who looked after that and made the collection. —A. We are agents for all of them.

Q. I grant that. Now, you have submitted a list of all of the members of the so-called Canadian Performing Rights Society Limited. Now, will you tell me by what form of instrument there is vested in the Canadian Performing Rights Society the legal right to licence performers, that is, to grant a performing right and the legal right to collect on behalf of the individual author the fees and charges which are demanded for the performing rights in this country; have you such instruments that you can now produce?—A. We have them in the office. I can file copies of them.

Q. Are they all the same form?—A. The two societies have executed agreements with us under which they give us the exclusive right to licence the works of their members, to license here in Canada the works of their members.

Q. Will you file copies of those agrements?—A. Yes, sir.

Q. Then the validity of these instruments will depend upon whether the authors have vested their rights in these societies whom you represent by granting from time to time rights in respect of their separate works?—A. Well, what the authors and composers have vested in us, assigned to the societies we get—

Q. Under those instruments.—A. Under those instruments.

Q. Yes, but I would like to know the ordinary process which you follow for proving title. A foreign society has copyright in some musical work, well, any one of these German publishers, and supposing you sue in our courts how do you prove that you are entitled to collect in respect of that German work.—A. We produce the assignment from the author composer to the publisher, and from the publisher to the British or American society, and then the document under which we obtained the general right to license, exclusive right to license this and other works.

Q. Yes. Then am I right in suggesting that under the statute enacted in this country, known as the Copyright Act, the author has a monopoly in respect of his work; he has the sole right to deal in that work or grant performing or publishing or other rights with respect to it. Now, we will start from him. Does he assign in Germany to some German company.—A. I have no knowledge of what he does in Germany, sir.

Q. I am dealing with the derivation on your title. Does that come through an assignment from the German author to some German society, say an assignment by the German author with respect to Canada to the English society or to the American society.—A. I can speak as to what the British—

Q. I am dealing with Canada. You say that you control some two and a half to 3 million works. I wish to know how you obtain title to them.—A. I beg your pardon, I did not understand for a moment. The German rights are conveyed to the British society.

Q. Direct.—A. No, an affiliation agreement between the German and the British society.

Q. Wait a moment. Is that a German society that does that? Is it done through the instrument of a German society, or by the individual German author?—A. It is done by the German society.

Q. First then we have the German author, then we have the German society.—A. Yes.

Q. To whom the German author has assigned all permorminng rights.—A. Yes.

Q. And then we have an English society to which the German society assigns all its interests in the performing rights?—A. Has given the right to licence.

Q. Given the right to licence, is that all?—A. It is a contract of affiliation between the two societies, by which the British society is given the right to collect in respect of the rights.

Q. Can you file a copy of one of those agreements so that we may see the derivation, whether it is by an instrument authorizing collection, or whether it vests the English society with rights other than collection?—A. I will have to get that from London. I shall obtain it.

Q. Then will you undertake to file with the Committee copies appertaining to your derivation of title, so that we can appreciate just how that title is derived? First, take the German National, he assigns to some German society. The German society either assigns those same rights to the British, or else authorizes the British as its attorney and agent to collect and then the British sub-attorns to the Canadian society. Do I understand that is the general way in which the right is derived?—A. Yes.

Q. And then in the same way the French National,—there is a French National Society?—A. Right.

Q. And it makes certain assignments of certain rights. And then the British society again authorizes your society as its sub-agent or sub-attorney?—A. We are, in a word, a collecting agency.

Q. You are more than a collecting agency, are you not? Let us follow that out a moment. I simply want to find the facts. Are not you more than a collecting agency, because you have authority to grant, either by licence or otherwise, the right to exercise performing rights with respect to each one of these copyrighted works? You not only collect but you have the right to grant the right for which you collect a fee or compensation.—A. That is a question upon which I would have to consult Mr. Anglin or Mr. Cassels. But I do say we have the right to grant—we have an exclusive right of licensing.

Q. Therefore, you are not merely a collecting agency, you are something more. You grant substantial rights with respect to which you do collect?—A. We say we can give the right to perform those works on payment of a certain fee.

By Mr. Ernst:

Q. Which you fix?—A. We are more than a collecting agency. We are formed to collect and protect.

By the Chairman:

Q. Now, let us follow this out. Every monopoly or combine naturally objects to regulation. We find it so in this country. The modern method of those who produce commodities or control the sale of commodities is to combine

in order that they may fix a price which they deem adequate or fair, equitable. But does your objection with respect to the regulation of your charges and fees extend beyond the mere objection which all those in a combine take?

Mr. ANGLIN: You mean from the practical standpoint, because if it is on the legal position—

The CHAIRMAN: I am dealing with it from the practical standpoint.

The WITNESS: Well, we object, if I may use the word, to interference with our right of contract, freedom of contract.

By the Chairman:

Q. Well, quite so. So do I object with all this police interference. If I walk from here to the hotel I am governed by a dozen laws which may tend to cripple my activities and liberties.—A. We say this, that we do not quite appreciate why we should be singled out when there are so many others that are not singled out.

Q. Such as? You might give us some pointers.—A. Perhaps we could, sir. The fact is that the public would not be benefited one jot.

Q. Well, now, we have to judge that. Does it not go down the whole line.—A. No, sir. I do wish to say this, sir, that there are combines in which there is the element of monopoly such as the radio concerns, and even perhaps the newspaper concerns.

Q. And perhaps the broadcasting concerns might be too.—A. But those concerns are very anxious that we should be regulated, and we say that this regulation of our fees would simply fatten their pockets.

Q. I grant that. I grant that is a contention.—A. It would not help the public at all.

Q. I don't know that, but it is a contention which should have weight. Your performing right does not exist apart from a legal right.—A. Mr. Anglin can answer that question.

Q. Well, assuming that your performing right does not exist apart from statute and international convention of recent date, then your German authors vests the right title and interests in their copyright—

By Mr. Chevrier:

Q. Which is it, the copyright or the performing right.—A. The performing right.

Mr. CHEVRIER: They retain the copyright.

By the Chairman:

Q. I may be wrong, but my suggestion is that the German society, and the French society—the German anyway, I am so informed, was vested with the entire copyright, and that when it assigned again—A. It is not so, sir. It is the performing right.

Q. It is only the performing right.—A. Yes.

By Mr. Chevrier:

Q. They retain the copyright.—A. Yes.

Mr. CHEVRIER: That is as I understand it.

The CHAIRMAN: Let us get beyond that. I should not like to accept that. I am dealing with the German. Is not the German society formed, not of authors, but largely of publishers in whom the entire copyright is vested with all the incidents of publication rights, performing rights, and of other rights.—A. I have no knowledge of that, sir. Mr. Hawkes has.

Q. All right, we will hear him again. In any case, even supposing my assumption is wrong, the performing right is a right in itself which appertains to the general law of copyright.—A. So I understand.

Q. Now, therefore, you have one combination of holders of performing rights in Germany which grants the licensing rights with respect to certain works to another society in England, which also receives similar grants from societies in France, in Italy, in America.—A. Yes.

Q. And then your English society, having gathered in through these various sources, the right to license the performance of these works, and in Canada this company has 2,500,000 of those works with respect to which it has complete direction and control.—A. Yes, substantially yes. But to put it somewhat different, the national of each of those countries under the Berne Convention, had in England British copyright—

Mr. ERNST: As the result of a British statute.

By the Chairman:

Q. They have under a British statute.—A. Well, under a British statute, Yes.

Q. That is, I understand the Berne Convention has never been ratified by statute in England.

Mr. CHEVRIER: It gives them the copyright protection.

The CHAIRMAN: The Berne Convention is not applied by the English court—

The WITNESS: I do wish to make this point, that the national in France, the individual author in France, the individual author in Germany has, in England, a certain British performing right, and he has in Canada—

Mr. ERNST: As the result of British statute.

Mr. CHEVRIER: It gives to the unionist in that country—

Mr. ERNST: By act of Parliament.

The WITNESS: My point is simply this, that he has in England a British copyright. He has in Canada a Canadian performing right. Now, how he gets it does not matter for the moment, but he says through his French society to the British society "wil you protect my right in Britain and collect the fees to which I am entitled for the performance of my work in Britain," and through the British society he says to us "will you protect my Canadian perfroming right and collect for me the fees to which I am entitled in respect to the performance of my work throughout every town, village and city in Canada."

By the Chairman:

Q. I am not going to discuss with you the colouring of things you say, but I wish to ask, do you see any strong reason or ground why when through the means which you have suggested at least 20,000,—I suppose there must be more than that, there must be 50,000 authors, whose works are controlled by you in Canada at the present time.—A. Getting near 30,000.

Q. Well, will you tell me the ground of your opinion when you object on moral grounds to any regulation, as to the prices which 30,000 authors in the combine exact from the exercise of performing rights for their works? Are not they in the same position as an yother combine which must necessarily be regulated in the interests of the public.—A. Well, we are not a combine, because there are a great many—

Q. Call it a combination then of 30,000 authors whose works in Canada are practically placed in the control and direction of Mr. Jamieson as executive of this company.—A. Yes, sir, that is so, but I simply make the point that there are other works—

Q. Oh, I grant that, but here are two and a half to three million of them at least. Now, we are dealing with those and they are a substantial number.—A. Well, the authors maintain that they have the sole right in their property, and they need the services of an association such as this in order to collect their fees, and they object to any interference with their rights of fixing their own fees.

Q. All right, I do not wish to pursue that matter further.—A. And they maintain it is against and contrary to the convention.

Q. Oh, well, that is another phase of it.

By Mr. Ernst:

Q. Mr. Jamieson, the position of advantage which you hold is the result of the Act of this Parliament, is it not? You incorporate under a statute of this Parliament, the Company's Act, to start with, do you not? Is that correct? You incorporate under a statute of this Parliament.—A. Our company.

Q. Yes.—A. Yes.

Q. And the rights which you have in this company are the result of the Copyright Act of this Parliament.—A. I understand so, yes.

Q. Now then, as the result of this statute your methods of collection are going to be made more efficient than they have in times past, that is, you will be in a better position to collect license fees, leaving out the question of regulation for the moment.—A. Would there be any fee.

Q. Leaving out the question of regulation for the moment. Let us assume the fee is a reasonable one. You are in a better position to collect than you were hitherto. Would you be in a better position to collect whatever fees is prescribed.

The CHAIRMAN: I think there is no doubt about that.

The WITNESS: I think possibly we would. I have not examined that.

By Mr. Ernst:

Q. In other words, this Parliament by its action would be putting you in a position where you could, if you so desired, exploit the public with reference to the works which you hold.—A. So far as the fixed fees—

Q. Leave out the question of the fixing of fees.

The CHAIRMAN: Meet the issue squarely.

By Mr. Ernst:

Q. Let us leave out the question of the regulation of fees for the moment. If you are given the right of what you call completing the contract with respect to works which you have, the performing rights, you would be in a position if you so desired—I am not suggesting you would—to exploit the public; you would have that power, would you not.

The CHAIRMAN: They would have the right to fix their fees at anything they saw fit.

The WITNESS: Just demand and supply by negotiation.

By Mr. Ernst:

Q. Well, when you control the supply it is a different proposition. Where is your objection.—A. The history of our negotiations can be given you by Mr. Hawkes, and you will find that these associations in those other countries have not been able to exploit and to dictate their fees. They have had to sit down and negotiate them.

Q. I do not know what the fees are, but it seems to me, in theory at least, that we are putting you in a very strong position, which I am not suggesting you will abuse; but can you tell me any reason why this parliament in granting you people statutory rights should not at the same time protect the public, the duty of this Parliament to the public.—A. Why protect the public before the need for protection appears.

Q. We are giving you potential powers, so why should we not protect the public where our duty lies?—A. You are protecting the public.

Q. With reference to the great mass we are certainly giving a great measure of potential protection to the public.

By the Chairman:

Q. I am not asserting that you have exercised your powers unreasonably. I am not suggesting by my enquiry that you are fixing prices unduly high, but certainly if certain clauses of this Bill pass, unless there is some restraining regulation, you can put them sky high, and there may be executives of your company who have not the same equitable mind and fairmindedness which you have.—A. I know that is the impression that we could put our price sky high. But, in fact, we cannot put our price sky high. We have to sit down and negotiate. For instance, when we sit down, as the British Society do, to negotiate with various associations or individuals, or with the British broadcasting commission, the history of all those negotiations, as Mr. Hawkes will be able to show, has been that we asked the price, which may be X. The music users suggest a price Z, and in the end there is a price Y somewhere in between. These prices have always been reached by negotiation.

Q. Quite so. And in the absence of the telephone rates fixed by the railway commission, and the railway rates fixed by the railway commission, and other rates which are fixed by public utility bodies, everything would be by negotiation and by agreement. But human nature is such that you must have some regulatory power in order to satisfy public opinion. That is our difficulty. I am not against Mr. Jamieson, not a bit. I have no predelictions against your company. I am just trying to see how he can come to a satisfactory solution of the difficulties.—A. Well sir, I can suggest this, that there seems to be a very wrong idea of the application of this thing. It is not the public interest that is in danger; it is simply the powerful body of music users on the one hand and the various classes of individual authors and composers on the other hand.

Q. That is so.—A. If we concede it is the right of the music user to move and use his influence to cut down our tariffs to the absolute minimum. starvation minimum—

Q. You see the same human instinct of acquisition——A. I say—

Q. —on the one side, which I suggest is represented by you, are met by other forces on the other side.—A. That was not what I was saying; I simply mentioned the point that this is not—the public is not in danger.

Q. Well?—A. There is between us and the public this body of music users.

Q. Let me put the case again if I may. You are wholesale dispensers of performing rights?—A. We are.

Q. And there are, as you say, your natural enemies the broadcasters and other enterprises of the country?—A. And—

Q. Just wait a moment. Then there are the hotels of the country that now find it necessary or convenient to supply music to their guests every evening?—A. Yes.

Q. At dinner? Then there are certain picture houses, theatres and all the rest, who have need of performing rights in order to assist with their varied forms of entertainment. Beside that, of course, there are the bands which play concerts in the public parks, and play in the streets, and all that sort of thing. In other words, there are various organizations which require licences for performing rights from you in order to carry out their undertakings. Now, naturally, when you say that you charge what price you like for that privilege, it does not concern the public. Does it only concern them, that is the point?—A. Well sir, I don't understand what you mean by their "undertakings". They are under no contract—

Q. I mean to say undertakings—I am using it in the legal sense as an enterprise that they are carrying out.—A. They are in business for profit.

Q. Certainly.—A. And they are large and important bodies, and they make contracts with us; and in fact, about 75 or 80 per cent of our fees are derived from those large users.

Q. Yes.—A. And those combinations of users, and therefore they are well able, I assure you sir, to take care of themselves.

Q. That may be. Is not this the existing state of affairs; that this Bill is of the instruments which they seek for their protection——A. No sir.

Q. Wait a moment. They seek for their protection against your supreme monopoly the intervention of parliament and such regulatory measures with respect to prices as parliament may impose. Are we not bound to take cognizance of their complaints?—A. No. Is not the government bound to ask them how much profit they wish to make?

Q. No, not necessarily.

By Mr. Ernst:

Q. It comes down to this: you really distrust the Governor in Council. As being unreasonable men, you think they won't give you large enough profits? —A. We don't know that the Governor in Council will be fully competent to enter into all our affairs and different—

The CHAIRMAN: Can you suggest any other competent body?

By Mr. Irvine:

Q. May I put it to you this way.—A. If I may first answer this other question. The music user is making a profit.

By the Chairman:

Q. Quite so.—A. And if—

Q. Certain classes of music users are making profits, and no doubt, large profits.—A. And if we regulate our fees and rates then he makes a greater profit, the public does not pay a lesser price for getting into the theatre.

Q. Is that not *non sequitur*?—A. It may be so, but the fact remains that they are making profit.

By Mr. Irvine:

Q. Suppose you assume for a moment your society, without any restrictions, provided under the statute, did charge too much. Suppose you charge the broadcasting company an enormous fee for advertising, and suppose that company paid that charge but charged this advertising to the price of goods they are advertising, does not the public come in there?

By Mr. Ernst:

Q. Of course there is the bottom of the ladder every time. There must be.— A. I think you have got to examine it a little more closely. The broadcaster is doing business with commercial concerns in the country. They are advertising their goods, and if the broadcaster charges more than they can afford, there would be no broadcasting. In other words it would—

By the Chairman:

Q. That is so.—A. In the final analysis of a dealer you must dispose of your tea or your coal, you must sell those commodities at a price which will satisfy the public.

By Mr. Irvine:

Q. The same thing that you are giving there will be true of everything and consequently there could be no monopoly. We can argue the same thing about the greatest monopoly in Canada, if you charge beyond a certain price the public will not buy.—A. That is what I say. If you charge too much the song is not used.

The CHAIRMAN: You may charge all the pockets will bear. There may be a difference between what the pockets will bear and what is fair.

By Mr. Chevrier:

Q. There is another factor. If they don't use your music, cannot they use what is in the public domain?—A. That is what I am trying to say.

The CHAIRMAN: I might explain to the committee, my friend is an expert in the law. The public domain includes the best songs which have been composed over fifty years ago.

Mr. CHEVRIER: Those concerts we hear on Saturday night are all taken from the music in the public domain.

By Mr. Irvine:

Q. Suppose you raise your prices so high that the music publisher must go back a thousand years to get a song, the public is affected?—A. May I make this statement? In fact what this society does have in its repertoire is about 90 per cent of the modern popular music and a great deal of which we don't have. Then, in addition, there is all that classical and ancient music which the public demand—

Q. And which is not very popular to-day.—A. I say this, if any association was. If any combine of music users feel aggrieved by the tariffs we charge, which are only a few dollars a week, a dollar a day or something of that sort, then he has a perfect opportunity to go into the market and get some music user, composer and—

Q. Compose new music?—A. Compose his own song.

Q. Of course, that is obvious.—A. There is no monopoly. It is only—

Q. Don't argue. Leave something to your counsel. What I would like to ask you is this: suppose parliament deems some regulatory measures necessary, and that somebody be constituted to hear complaints with regard to your tariffs, have you any other body to suggest? Is there any other body to whom you would refer that this matter should be submitted?—A. We have no suggestion on that at all, sir; we have not considered the matter.

Q. I understood you to suggest that the Governor in Council, being a political body, might not be fair. Would you rather have it submitted to a court or judge, or some independent tribunal—the new tariff board?—A. No; I think they are all equally bad, sir, from our point of view.

By Mr. Chevrier:

Q. For some time in the broadcasting, and it has been more pronounced recently, a large number of American broadcasting stations announce, "by consent" or "with the consent of the copyright owners." Has that interfered in any way with the licensing that you have been doing?—A. No, I do not think that has any effect on us.

Q. Then they pay no royalties?—A. Oh—

Q. They get the right from the author to do that? And they do not pay any royalties?—A. Mr. Buck can answer that.

By the Chairman:

Q. You suggested that you had furnished here in this slip, exhibit D, a list of publishers. Now, are you able to guarantee that all music which is issued from time to time by these publishers is copyright music?—A. Mr. Buck and Mr. Hawkes will be able to answer that question; they have knowledge of what they get.

Q. Your suggestion was—let me see if I understand you—the user who wished to ascertain whether music was copyrighted or not could look upon the music sheet as published and seeing the name of one of those publishers would be assured that that music was copyrighted, and that copyright is existing at present.

Mr. CHEVRIER: Depending upon the country from which he came.

The CHAIRMAN: He is giving a list here.

WITNESS: What we do say, Sir, is that he knows that the copyright is in the right of the author for fifty years. He is well able to presume, at least, that copyright exists. He can look at a sheet of music, and he can see the publisher on the sheet of music.

By the Chairman:

Q. And he can write to the publisher?—A. Yes.

Mr. CHEVRIER: You do not know apparently. I am asking you.

By the Chairman:

Q. I will take one of these publishers here— —A. I will say this that we have substantially all the works that are owned by those—

Q. Quite so; but how am I to determine from this sheet which you wish to file with the Secretary of State as indicating the publishers, what music is in your control in which copyright subsists?—A. Well, first of all you can look at the sheet of music, Sir, and you find a certain publisher is on that list, and if he is in that booklet, then you can come to us for permission for that work.

Q. But are you not by that method forcing the user to come to you and depend upon you as to whether copyright subsists in that work, and whether that copyright which subsists in that work is in your direction or control?—A. No, Sir, we are not forcing anybody to come to us.

Q. That is, of course, so; but you might as well say that you own all the lakes about here from which one can get a drink of water and that you are not forcing us to go to you to get a drink?—A. That is quite incorrect.

Q. You say that you have ninety per cent of the modern music in your control?—A. With all due respect, Sir, I say that it does not quite work out that way. The music user desires to know who owns the work.

Q. And whether the copyright subsists or not?—A. He says that lists of our works are not available to him. We have, therefore, issued this pamphlet so that he will be helped, and will be able to come to us in respect of at least ninety per cent of the modern popular works, and we feel that this is a plank, an aid, a convenience to him, and we are issuing it broadcast throughout the country at our own expense—the expense of the author, without forcing him to come, and we are enabling him to come—

Q. I agree with all that entirely. I was assuming that as a matter of regulation we wished your company to file at some public depository such as that of the Copyright Branch, information which will enable the user of copyright music to ascertain those works which you claim to control. You say, "I simply file a list of publishers to whom we write." I will go further and ask you how can that user determine from a list of publishers filed as to whether all the works published by that publisher are copyrighted?—A. He can ask us, and we can show him the published catalogue.

Q. It strikes me that that attitude is an indication that you are in supreme control; that he really must go to you?—A. No, Sir. It is not an attitude. It is simply that we are in a position—we do have this information, and this office that we have is a convenience on the one hand to the authors, and on the other hand, to the users. The authors get protection from us, and the users come to us and find out what works we protect.

Q. There is no doubt you offer many facilities to authors and the public? —A. They get protection. We presume that the music user wishes to pay for the use of our music.

Q. But he may not wish to pay for the use of the works in which no copyright subsists?—A. Quite so, but we think that our association is of great convenience and help to him; that instead of having to write to every corner of the world—

Q. Oh, no doubt, no doubt?—A. It may be so, but if you are going to wash out of existence the association of authors, you are going to force—

Q. I am not going to wipe out of existence any association?—A. You are going to force them to go to every corner of the globe to get permission.

Q. That is an exaggeration. Nobody is suggesting that.

Mr. CHEVRIER: Is it not easy to find out whether it is copyrighted or not? As I understand it, this is the way, and if I am wrong, I will ask who ever knows I am wrong to correct me—if I want to find out whether it is copyrighted or not I look at the sheet of music and I see Tom Jones' name on it. I find that Tom Jones' name is on the sheet of music, and I find that that music was written in Finland, and then I find out that the writer is still alive or that he died forty years ago. Then I know, if I know anything.

The CHAIRMAN: How do you know that?

Mr. CHEVRIER: If I find that Tom Jones has been dead for fifty-one years, Finland.

WITNESS: Yes.

Mr. CHEVRIER: There it is on the book; it is right there, "published by so and so." I see it was printed in Finland. Finland is one of the Unionist countries. Then I know that the writer is protected. Then it is my business to go and find out who owns that copyright.

WITNESS: Yes.

Mr. CHEVRIER: If I find that Tom Jones has been dead for fifty-one years, I can play it.

The CHAIRMAN: But nobody interferes because it is in the public domain.

WITNESS: Yes.

Mr. CHEVRIER: If he is dead forty-six years it is my business, unless I want to use that man's property unlawfully—it is my duty to go to somebody and find out whether he is alive or dead. That is simple.

By the Chairman:

Q. If we had some universal biography which gave the dates of life and death, it would be simple?—A. We have that. We have a universal association for that very purpose.

Q. That is one of the facilities that you give to the public, but that all depends upon you?

Mr. IRVINE: Supposing he was dead forty-five years, and you said he was alive and kicking?

Mr. CHEVRIER: You are liable for damages for mis-information.

Mr. Ernst: Would not it be simpler if a list of these works was filed and the department kept the record, and you could say to the department, "is so and so copyrighted?"

Mr. Chevrier: If I could give my own view. I want to be fair to both interests, and I have been at this ever since 1912. I have seen enough of it to know where the line lies.

The Chairman: I hope we will all be able to see that before we are through. Sometimes I think we will have to have a microscope.

Mr. Chevrier: I want to be fair to everybody.

The Chairman: That is all I wish to ask for the present.

By Mr. Irvine:

Q. There is one question I would like to ask you, Mr. Jamieson, before you go. In your statement you say the Canadian Association is being operated on the British system. Of the annual revenues of the Canadian Society fifty per cent is payable to the British Society, and fifty per cent to the American Society. I understand that that leaves nothing for the Canadian Society. Have you any protection for Canadian Nationals in Canada?—A. Yes. May I say this that when this company was formed in 1925, it was formed as the result of a meeting in London between the late Colonel W. R. Lang and Sir Alexander Mackenzie and others in London, and this society was formed to protect here in Canada the British rights. Now, when we formed that company my instructions were—incidentally, they chose me because I was a public trustee and accountant, and could go into these matters of division and accounts and classifications, and so forth and so on, but I have been doing nothing but law for the last six years. However, some day I hope to come back into my own stride. Now, my instructions were—my instructions from the British Society were to form a society here and to invite Canadian authors and composers to come in and affiliate and work with them. I called a meeting in the Toronto Board of Trade. I issued the invitation broadcast and two or three individuals turned up. Apparently there was no effective interest in musical copyright, that is, so far as Canadian authors and composers are concerned. I do believe, however, that Col. Cooper is going to conduct a school of culture and grow them in a hothouse. We hope that he is successful. But during the last six years there has been some development in the Canadian authors and composers, and we are still prepared and ready to make the agreement with any body as soon as it appears.. There is, in fact, a Canadian authors and composers society which has recently been formed and we are prepared to work with them and to give them whatever share of our fees they are entitled to on performance, but we are not going to take a knife and simply slice off some portion without regard to performance. There was the request made by certain Canadian interests that that should be done. Well, we are not going to do that. We are going to give to the authors and composers whose works are performed without regard to anything else. That is to say, if their work is performed 100 per cent they will get it all.

By the Chairman:

Q. I understand you have not entered into any association or written agreement with any Canadian society up to the present time.—A. No, sir, but we have gone so far as to advise that society that we are perfectly prepared to look after their rights and they will get their share.

The Chairman: Supposing we hear from some of the others at this time.

Mr. Ernst: It is a quarter to one, Mr. Chairman. Do you think we will be able to get through in a quarter of an hour.

The CHAIRMAN: Mr. Chevrier, have you any objection to coming back at 4 o'clock.

Mr. CHEVRIER: No, Mr. Chairman.

The CHAIRMAN: Well supposing we return at 4 o'clock and work until 6 o'clock.

The Committee adjourned at 12.45 p.m. to resume at 4 p.m.

On resuming at 4 p.m.

Mr. JAMIESON: Just to save misapprehension. In regard to all statements of fact made in our statement, Memorandum C, I vouch for those.

The CHAIRMAN: Memorandum C is not in.

Mr. JAMIESON: I vouch for those.

The CHAIRMAN: Well, I do not think that helps you at all. You went over C and you referred to some statements of fact for which you vouched on oath, and the rest of the statement stood as a matter of argument or brief. Now, if you go through that carefully again you will have ample opportunity, if there are any further statements of fact you wish to make, but we cannot take them as "C". C is not in as part of the evidence.

Mr. JAMIESON: Well, I would like to put it in.

The CHAIRMAN: Well, I should object to that——

GEORGE BUCK: called and sworn.

By the Chairman:

Q. Where is your residence, Mr. Buck.—A. In New York.

Q. Can you give a residence where we can get you.—A. Kensington, Great Neck, Long Island. I am Vice-President of the Canadian Performing Right Society, President of the American Society of Composers, Authors and Publishers.

The CHAIRMAN: We will be very glad to have any additional statements of fact which you care to submit to the committee.

The WITNESS: Mr. Chairman and gentlemen, I wish to express my appreciation of this opportunity of being heard in this very important piece of legislation. If you will be so kind as to permit me to make a short statement, I would then be very happy to answer any question put by yourself or any member of the committee pertaining to the activity of the American Society of Composers, Authors and Publishers, and where it touches on the legal phase of it I have brought our General Counsel, Mr. Nathan Burkan, to answer that. I am not a lawyer, sir. I happen to be an author. I have written for the Ziegfield Follies for some 17 years.

I address myself to section 10. I feel that not quite enough has been said here about authors and composers. I feel that there is a great deal of monopoly——

The CHAIRMAN: I want to hear you, but will you make short, concise statements of fact.

The WITNESS: I will, sir.

The CHAIRMAN: Because this committee is not interested in your feelings and the House of Commons it not interested. If you will just make short statements of fact.

The WITNESS: I will try, sir, but I cannot change the way God gave me to express myself. I say, that, sir, with all due courtesy.

It seems that among some people, and among some nations that those who chose to work with the products of their brains instead of their hands are always begging and needing to protect that particular gift that they have. If a man makes this chair it is his, no question about it. He does not have to put his name on it, he does not have to register it. But if you choose, sir, to write a song, or a play, or a book or an article, through some particular trick of fate you must go through a million formalities, yet any person loaded with larceny can come along and take it without even asking you any question.

The CHAIRMAN: Do you think that helps us at all.—A. It pertains, sir, if you will permit me to develop the thought,—it leads to one point I desire to make, and then I am going to answer any questions that were propounded here this morning, that Mr. Jamieson was unable to answer, owing to the fact that he has not had the opportunity to have acute and close relationship to authors who join together to protect their rights.

I think, for the sake of argument, it would be well for me to state why authors and composers joined together. A number of years ago songs were taken from a play where a manager spent $100,000 to $200,000, paid an author so much royalty on the gate receipts, as we term it, for the products of his brain. That song was transposed, taken from the theatre without ever asking the author, or asking the producer of the play, and set up in a dance hall. A person was engaged, the song was sung and the author had nothing to do with it, they said, owing to the fact that no admission was charged at the door.

The CHAIRMAN: Mr. Buck, I do not wish to interfere, but you are talking of elementary things.

The WITNESS: I am leading right to a point that you developed.

The CHAIRMAN: Those rights are protected to-day.

The WITNESS: I am trying to give you the fundamental basis and the necessity for authors and composers to join together to protect their rights. That is all I am attempting to do.

The CHAIRMAN: I have no objection.

The WITNESS: Well, that is what I am trying to do. Now when that author went to the owner of that restaurant to ask why this gentleman had usurped the product of his brain and got it for nothing, and asked something for that, he was told that no admission was charged at the door; it was done under the guise of a cover charge. Now, when the author went to those gentlemen and asked them—Victor Herbert by name—to pay him, he was met by the hotel owners association. The authors had no association, sir. The next thing, along came a motion picture industry who started picking up the works of the author, the creator of materials, and utilizing them. When the author went to the motion picture man he was met by the attorney for the motion picture association. With the development of radio, radio came along, this extraordinary potential instrument that is one of the greatest products of the home life of the world. When the author went to see the radio man he was met by an association of broadcasters. That, sir, was the necessity for the authors joining together and taking what we call this performing right and giving it over to an association who could handle that for them and which, sir, is certainly beneficial to the user, because if any attempt is made to disarm or to harm us, or to curb us, or to throttle these gentlemen—

Q. The authors, you mean.—A. Yes, associations, you will immediately fill the court-rooms of the country with individual cases and create a state of chaos with the users of music.

The CHAIRMAN: Well, Mr. Buck, I do not understand that any plea has been put before this committee—I doubt if any plea is to be put before this

committee against the right of the authors to associate themselves and protect their interests. I do not think that there is any suggestion before this committee that authors should not be protected in respect of the products of their intellect.

The WITNESS: But Mr. Chairman, the desire before this committee that ran rampant through it, that brought me here, sir, was the desire to take the author,—there would not be a picture house open in America tonight, there would not be a radio set open tonight; there would not be a cabaret or a dance hall open tonight, nor would a state fair open if they did not have bands and music to help put that state fair over, sir.

The CHAIRMAN: We all agree about that. Why should we waste time. There is no doubt about that. There are two respects only in which this bill raises any question with respect to the matters which you are discussing. The first is this section which deals with fraternal and educational societies.

The WITNESS: May I correct that.

The CHAIRMAN: That is one. We will hear any suggestions as to that. The second is that we have no law, do not propose any law against associations, combines and monopolies of authors.

Mr. ERNST: I would just as soon hear the witness' story in his own way. I am quite willing to extend the courtesy to him of listening to his story as he wishes to deliver it.

The WITNESS: I am grateful to you, sir,for your courtesy.

The CHAIRMAN: I have no objection, but it seems to me an utter waste of time, that is all.

The WITNESS: I do not believe, sir, that time is ever wasted in dealing with creative products. I know of no greater gift that God bestows than to allow man to read a thought that can live 100 years. And it is on that plea, sir, that I appear here to-day. I have spent my life fighting for the creators of material.

The CHAIRMAN: There is no objection to that. However, that point is not before the committee, and it is not likely to come before the committee. We are very busy men, and we have many activities, and we wish to have your suggestions stated succinctly so that this committee will appreciate them.

The WITNESS: If you will permit and allow me to express myself. As I stated, I am not an attorney, and possibly looking at it from a legal mind I might say something that to you, sir, may seem irrelevant. But to the men I have the honour to speak for—and I am not speaking alone for American authors—

The CHAIRMAN: You are speaking of things that are universally approved.

The WITNESS: I sit here by grace of you as Chairman of this committee. I have come a long way to do that, and I do not want to be put in the position of seeming to show any discourtesy. There is no discourtesy on my part.

The CHAIRMAN: No suggestion of discourtesy.

The WITNESS: There seems to be an attempt to hamper when I try to express a thought; there seems to be an attempt to shut me off without concluding that thought.

Mr. ERNST: Go ahead and tell your story in your own way.

The WITNESS: Thank you very much, sir. We have a very important question that I wish to introduce here, that has not been brought out. In 1924 Canada entered into a treaty with the United States on the question of Copyright.

The CHAIRMAN: Would you produce the treaty.

The WITNESS: I will produce the treaty, I have it sir.

The CHAIRMAN: We will put it in evidence.

The WITNESS: I shall put it in and I also wish to discuss it, because it is a very important point. I wish to introduce a copy of the treaty signed by Calvin Coolidge and Thomas A. Lowe, Minister of Trade and Commerce for the Dominion of Canada on December 26, 1923.

I wish to make the point pertaining to the treaty that when the American Society of Composers, Authors and Publishers and the British Performing Right Society formed that it was with the belief and understanding that our rights were fully protected under this treaty in Canada, and at that time there was no such notion or idea of regulation of prices in existence. Price fixing is a most dangerous and extraordinary subject. The gentleman who utilize our works, namely, the motion picture owners, the radio broadcasters, the dance hall owners and those other gentlemen, are not subject to any regulations, and it takes a great deal of thought to wonder why the creator, the man who makes it possible for these things to exist should be picked on when it comes down to regulations. There is no regulation to tell the broadcaster how much he should charge an hour; there is no regulation to tell the motion picture owner how much he should charge per seat, or how much he should put his picture on for, and through some peculiar trick of fate which I think is instigated by gentlemen loaded with a sinister purpose—and I wish to make the point, sir, that I am not here asking Canada for special favours, I am merely here trying to defend every Canadian author and composer. And in this room at this moment there is a Canadian gentleman who wrote one of the greatest songs that came out of the Great War "Dear Old Pal of Mine", Mr. Gitz Rice, who under the direction of our Copyright law and no regulations whatsoever became a world hero. Now, sir, you must know this subject,—and I believe you do—

The CHAIRMAN: Would you allow me to interrupt a moment. Do you mean to say that this arrangement does any more than to declare that whatever rights Canadian authors may have under the Canadian law, similar rights will be enjoyed by the Americans.

The WITNESS: That is the point I wish to make, sir.

The CHAIRMAN: Well, that is all. You do not say that precludes us from making admendments to our law which would be applicable to both Americans and Canadians, do you.

Mr. ERNST: After all, this man is not a lawyer.

The CHAIRMAN: I am merely asking what his contention is. I am asking you, is that your contention.

The WITNESS: I have Mr. Burkan here to answer any legal question.

Mr. BURKAN: I say you have no right to price-fix, because when that proclamation was issued it was made with reference to the then existing Canadian statutes. If the Canadian Statutes contained the provisions which would give it the effect of being confiscatory, it is safe to say that the American Government would not have issued the proclamation. It was only with reference to that siuation, and undoubtedly the treaty—

The CHAIRMAN: That is not a treaty.

Mr. BURKAN: It is a proclamation, it is practically a treaty.

The CHAIRMAN: All it says is that on and from the 1st day of January, 1924, the said country (that is, the United States of America) shall, for the purpose of the rights conferred by the said Act, be treated as if it were a country to which the said Act extends. That brought you, in so far as the said Act is concerned, into the fraternity.

Mr. BURKAN: Dealing with a specific Act which contained no price-fixing provision.

The CHAIRMAN: Do you mean to say that we are bound under this proclamation, so that we cannot amend our Act.

Mr. BURKAN: You cannot; with respect to future copyrights you have the right to make any change you see fit. Just as the United States could not to-day deprive Canadians. Supposing the United States amended its law so that a Canadian citizen received no protection or a medium of protection.

Mr. ERNST: In other words, you say the rights are vested.

Mr. BURKAN: Vested rights. It can only be with respect to the future.

The CHAIRMAN: Well, I understand your contention but I do not agree with you in any sense of the word. I think that contention will have to be made by the American diplomatic authorities to have any weight.

Mr. BURKAN: I am just a lawyer expressing an opinion.

The CHAIRMAN: Will you go on, please.

The WITNESS: I would like to develop, Mr. Chairman, a point that a great deal has been made of here, monopoly. That is the bugaboo always on the side of those pertaining to users of music; that argument has presented itself since the society formed to protect itself. The minute the authors got together to stop men from legalizing piracy and taking their work they were called a monopoly. I know something of copyright, sir. I have made a study of it all my life, and copyright is in itself a monopoly. It is in itself a monopoly to the exclusion of all others. The minute I develop my thought, put it in music, a book, or a play, or a patent, the minute I let folks see it the government is my partner with the solemn obligation for a certain term of years that that shall be exclusively mine. That in itself is a monopoly.

The CHAIRMAN: That is the effect of a statutory enactment.

The WITNESS: That is right, sir. I agree with you, sir, when you say authors have monopolies. They certainly have a monopoly. That is what it means. The laws of the United States were taken from the laws of England, and the laws of England go back to the time of Queen Anne. This is not any cute, nice affair which has been thought up to meet an expediency. Motion picture owners, or radio broadcasters who are here—and who are here in great numbers, sir, to tell you and stimulate their political activity through your nation to come down here—would have you gentlemen pass a bill to take the products of a man's brain. That is what brings me here, sir, to make a plea for those men. What other authors are in this room. What other authors are here? Who are the public in this room? The public is not here, sir. You gentlemen represent the public. But there is no number of the great public of this nation of this Dominion in this room telling you gentlemen to do this. You are only asked to do it by a single group of men who would like to regulate us. That is the basis stripped of all its verbiage, and no one is here to tell them that they shall charge so much an hour: no one is here to tell them that they shall charge so much a seat. And even if those gentlemen are given the right to regulate their raw material they shall not let the public into the theatre any cheaper. As far as the public is concerned, however, in this particular day of copyright—and if you men know anything about copyright or its ramification, it is the user of the creator, and I appear before you, sir, and you gentlemen, to make the earnest plea for the creator, because through the history of the world, 90 per cent of them are starving to death.

By Mr. Irvine:

Q. How does this bill affect the creator?—A. Because it shall regulate him and shall not regulate the user.

By Mr. Ernst:

Q. Your point is if the question of price-fixing were taken out that you would get what you wanted from the bill substantially; that is correct is it?—A. I am not here to tell you gentlemen how to write a copyright Act. I am

only here, sir, because of certain things, a certain feature in a bill that is proposed, that some people feel deeply is going to be passed. I was told the minute I got off the train, some folks who have preconceived notions on the activities of the minds of your Parliament, told me there is no use talking to those gentlemen, they are going to pass this bill—

Mr. ERNST: They had no right to speak for me. I don't know for anybody else. Quite frankly, I am looking for information.

The WITNESS: I am trying to give it to you, sir, I want to make this point that it is an extraordinary thing here that the creator, the raw material that those gentlemen must have to exist, is here to be regulated, but on these great patents no one is here to regulate them; no suggestion has been made at any one of these hearings that you should regulate—

The CHAIRMAN: We are not through with the hearings yet. If you will confine your objections to this bill, to me it would be relevant. What you are saying now does not have the slightest effect upon me.

The WITNESS: I bow graciously to your will, Mr. Chairman. I can only hope, sir, that I am able to answer any question pertaining to this subject, put to me by you or any member of the committee, and if it is a legal question that I cannot answer, I will be obliged if you will extend the same courtesy to Mr. Burkan and permit him to answer.

By the Chairman:

Q. I would like to ask you some questions with regard to the organization of the American Society of Composers, Authors and Publishers; is it an incorporated company?—A. No, it is a voluntary organization, an association.

Mr. BURKAN: A volunteer association organized under the laws of the State of New York.

WITNESS: It is a corporate entity.

Mr. BURKAN: It is a voluntary association just like labour union.

WITNESS: We have legislation dealing with such an association.

Mr. BURKAN: Yes. It brings actions in the name of the president, and sues. All labour unions are organized the same way.

By the Chairman:

Q. It is composed to a certain extent of a large number of publishing companies?—A. Publishers and composers.

Q. These publishers are publishers of music chiefly?—A. Yes. He is the agent of the creator.

Q. Are they publishers of books?—A. No, just music. In the American Society, just music.

Q. Music?—A. Yes; music.

Q. And among the list the composers here are given a number as well. How are the profits and receipts of your association distributed?—A. They are distributed quarterly, four times a year.

Q. On what basis?—A. The funds are distributed by a classification committee. There are numerous types of—This, Sir, will answer a question asked to-day and was unanswered. There are different kinds of music. There are what we call standard works of the higher class of music, and then there are operatic works such as light musical comedies. They come under the head of a musical play. Then there are popular songs that do not live long. Then the semi-popular. You have songs like, for instance, a semi-popular song would be "I hear you Calling me".

Q. This is an American Association having certain legal standing under the law of the State of New York governing associations?—A. Yes, Sir.

Mr. BURKAN: But consisting also of foreigners. Canadians are also members. Mr. Gitz Rice, Godfrey O'Hara and a number of other Canadians are members.

WITNESS: Residing in the United States.

Mr. BURKAN: It is their market. They go there.

The CHAIRMAN: Do the authors vest in your association any rights?

Mr. BURKAN: I think I had better be sworn.

NATHAN BURKAN, called and sworn.

WITNESS: I live at 1136 Fifth Avenue, New York City. I am attorney to the Supreme Court of the United States and all the courts of record of the State of New York, Court of Appeal, Supreme Court, State of New York. I was admitted to practice in 1900. I am an attorney and general counsel for the American Society of Composers, Authors and Publishers, and for the organization of that society in the year 1914, and I have been its counsel ever since.

By the Chairman:

Q. When was your association founded?—A. In 1914.

Q. What was the date of the American copyright going into force?—A. The last—

Q. No, the first general copyright?—A. Our first? Well, 1803 was our first copyright act. Music was first protected in 1903, and the last act was 1909. The rights of public performers of musical works were first enacted in 1856, in relation to dramatic performances, but dramatic performing rights, dramatic musical compositions, comic operas and songs of that character were protected under the act of 1856. In 1897 there was an amendment made to the law which included musical works. That was from 1897—

Q. That is what I was dealing with. I thought it was 1907?—A. No. 1907 was the codification.

Q. You say that musical works received copyright since 1897?—A. Performing rights were protected since 1897. Performing rights and dramatic musical works were first protected by the act of 1856, October, 1856. Performing rights for musical works were protected first by the act of 1897. Then came the revision of 1909, but by the revision of 1909 musical works, dramatic works and dramatic musical works received protection with respect to performance.

Q. Do the authors in your association vest in your company any rights with respect to performing rights or the collection of fees?—A. Yes.

Q. What do they do?—A. They make a contract for a term of five years, vesting—assigning to the society the non-dramatic performing rights in their respective musical compositions.

Q. That would include all musical performances?—A. Public performances for profit. It would not include stage performances, because we have various classes as Mr. Buck said—men who write comic operas—Trial by Jury and the Mikado. In respect to those rights the author deals directly, the author or composer deals directly with the stage producer.

Q. But your association does not deal with musical dramatic works which are produced on the stage?—A. Well, after a play has had its run, numbers are taken out of the play and then are permitted to be performed generally for the public.

By Mr. Ernst:

Q. Such as Gilbert and Sullivan's Maid of the Mountains?—A. Yes.

By the Chairman:

Q. I understand your distinction. Can you give me the form of contract that your authors sign?—A. The form? Yes, we can send one up to you with pleasure.

Q. Do you have a uniform contract?—A. We have a uniform contract, absolutely for all—all alike.

Q. Does your association with respect to those works which are under your control collect the fees, charges or royalties for performing rights?—A. Yes.

Q. Directly?—A. The society collects them directly.

Q. Does the society sue in the courts for collection?—A. The society sues in the courts in the name of the president, Mr. Buck, and the owner of the copyright.

Q. And the owner of the copyright. That is the owner of the copyright has to be one of the parties, a joint plaintiff?—A. Yes, Sir; under our law.

Q. In other words, the president of your society is joined in respect of your society's interest, but as the author has not parted with his copyright, or the performing rights in his copyright, he is joined also?—A. Under our law, copyright laws we have visibility. All the rights granted by the copyright vest in the copyright proprietor.

Q. Is there any doubt about the applying in every country?—A. Under the English law the rights are separable.

Q. You are simply saying that they are separable?—A. No, they are not under the American law. If the author assigns his own copyright—assume that I write a novel and I assign the motion picture rights to a motion picture company, the motion picture company cannot sue for infringement unless it joins me as owner of the copyright because the copyright has been in my name, and because the novel is coyprighted in my name, and therefore when the motion picture company brings its action it must join the owner of the copyright, and for that reason when the society brings suit, it must join the copyright proprietor, because the legal title vests in the proprietor, and we have the Act—and for that reason both men join in the action.

Q. Then, as a matter of fact, your society in the United States differs both in its organization and legal qualities and powers from such an institution as the Canadian Performing Rights Society, Limited?—A. I do not think so, because in our case the author and the composer and the publisher each signs a contract with the society under which each grants to the society the performing rights, the non-dramatic performing rights in his work for a period of five years.

Q. Is that same form of contract adopted in Canada?—A. In turn, the American Society made a contract with the Canadian Society under which the American Society grants to the Canadian Society the right—it transfers or assigns or licenses the Canadian Society to exercise these rights for the territory of Canada because our rights convey to us—the rights conveyed to us by our members not only relate to the United States but also cover the Dominion of Canada and some foreign countries, and we parcel out Canada to this Canadian Society.

By Mr. Ernst:

Q. Your society in entering into contracts with these authors or composers —who would enter into the contract in behalf of your society, the secretary or president?—A. The president and secretary.

Q. Do you also enter into contracts with foreign composers like the English society?—A. Yes, sir, we have a treaty, an agreement with them that they protect our rights over there and we protect their rights in America.

Q. You are more than merely an association of American authors; you have the additional feature, your society also handles musical productions from

other countries?—A. Practically most countries of the world. I might say this that the reason for that is this: in dealing with users we find that they have got to have a diversified international program. We find that the ordinary dance hall cabaret must have eighty-one numbers or tunes for a night's performance. A broadcasting station must have twenty songs per hour. The program must be varied, attractive and pleasing, and there has got to be a reservoir, a fund from which they can draw, and, therefore, if you restricted our catalogue repertoire to Americans, we could not satisfy the demands of the users. Since 1914 to this day we have never had a case—I do not recall a case where the users ever applied for a single song. He contracts in gross or blanket contracts. Under those contracts he gets the rights to use all the works in the repertoire of the society. That means the United States, British, French, Italian, Austrian, German and Swiss—whatever country may have a contract, for that same money. Let me say this. When we organized we met the hotel people and they fixed the rates. The rates of a first class hotel were $360 a year, second class hotels $160 a year, and I think third class hotels $90.

By the Chairman:

Q. Could you produce a schedule?—A. Yes, we will. Now, I might say this. With the theatres—we met them and they negotiated a contract upon the basis of ten cents per seat per year. That is all they have ever paid from 1914 to this day.

Q. Who is that?—A. The theatre owners, the motion picture theatre owners —ten cents per seat per year, and for that they get the works not only of American authors, but everywhere else. Now, with respect to Canadians, Canadians come down to the States because that is their market. They can sell to all the publishing houses down there. I had the pleasure some years ago, before I had relations with Canada, to protect a Canadian author, Mr. Gitz Rice. He is here to-day. He wrote "Dear Old Pal of Mine". The Columbia Gramaphone Company took the position that since we had no relations with Canada that they could sell his "Dear Old Pal of Mine" and they definitely refused to pay royalties. Now, in that situation I brought a suit in our court. He was clad in the uniform of a Canadian soldier engaged in recruiting. Our courts held, in view of the fact that he had done the work, that he was entitled to protection, and he was entitled to $11,000.

Q. Was he resident in the United States?—A. He was there temporarily. He was there as a recruiting officer. They made the contention—

Q. What year was that?—A. 1918. He had been gassed and returned. The proclamation was in 1923. They carried the case to the highest courts, and I had the pleasure of fighting out that case, and Mr. Rice collected $11,000, and the Columbia Gramaphone Company took another position. They said that they had shipped these records up to Canada, and therefore, he would have to collect his royalties in Canada, and South America; but we showed that six out of seven steps in the making of records were made in the United States—the Master Record—and everything was done except the pressing. The pressing was done up here, but all the rest was done in the States,—manufacturing was done in the States—six out of seven of the steps were done in the States, and they had to pay, the courts said. Mr. Geoff O'Hara, Mr. Hobart—we'll give you a list—all these men are entitled to join the society, and they are all protected by that society. Here is our scheme of division. The moneys collected are divided as follows: ten per cent is kept for the use and benefit of the society, retained by its treasury. The balance is divided among the publishers, authors and composers. The men are classifield. There is a classification of composers and authors. They are classified from the membership. They know the standing of each composer and each author, and each class of composer. There are men who write

symphonic poems. Men who write popular songs, comic operas, and standard works, and each of his class is represented on the board. This classification committee permits this allotment, the money is divided up to each man according to what the man contributes to the society. Then the publishers divide the same way.

Q. What have the publishers to do with the performing rights, unless the whole copyright is first vested in the publisher?—A. They have this to do. There are three people interested in a song: the man who wrote the music, the composer; the man who writes the words, the author; the publisher, the man who is exploiting it—the man who sends out people to introduce it and who sends out people to advertise it. He has made his investment of labour, energy and capital to put it out, and to create publicity.

By Mr. Ernst:

Q. You say he usually enters into a contract?—A. Yes, which he shares with these men. They divide it.

By the Chairman:

Q. Do not your publishers usually require, before publishing, an assignment to them of the copyright?—A. They do—an understanding or assignment.

Q. They are the real owners then within the meaning of the Copyright Act?—A. Well, they are the real owners, yet you have always to recognize that under the rules of this society the composer and author have always participated, and he shares with these gentlemen.

Q. Quite so. I was dealing with the legal aspect of it?—A. I just tested out the question of the rights of the owners of the copyrights. The question is now up. It is decided by our Circuit Courts of Appeals in the second district. There is a sort of trust relationship when the publisher takes a song.

Q. Unless he takes an assignment of the copyright?—A. Unless he takes an assignment of the copyright, but there is an implied covenant that he is to go on and publish. He has to do work. He cannot take that work and destroy it. He has to utilize it and push it along. But in so far as the society is concerned the society recognizes by agreement the author, the composer and the publisher, and these men in these hard times—these authors and composers look to the society for their sole support because the sales of sheet music have dropped. There has been a tremendous drop. It has practically been killed—the sale of gramaphone records—because there has been a new form of entertainment, radio and motion pictures.

Q. Is it not almost uniform, in respect of the contracts and assignments made of copyright by the author to the publisher, that such contracts territorially cover the United States, and Canada and Mexico as well as the United States, although the contract is made in the United States?—A. Many of the contracts cover not only the United States, but they cover the entire world. When a man comes along with a new song he makes a contract under which he assigns to this man all his rights.

Q. He assigns to the publisher?—A. To the publisher. All his rights. He receives a fixed royalty for the United States and for foreign countries. I think the royalty differs.

Q. That is the royalty on publications?—A. The royalty on publications, and also the royalty on mechanical performance.

Q. Quite so?—A. These rights that we are dealing with now, these performing rights, while from the wording of the contract it may be held that they are covered—

Q. They are covered, are they not?—A. They are not for this reason. You must bear with me. While it might be said that they are turned over to the publisher, as a matter of fact the publisher has recognized in all these years

since 1919 the right of the composer and the author to make his contract with the American Society under which he participates with the publisher in all the receipts derived from this public performance.

Q. Is this not the case: the publisher, although the copyright is vested in him, yet for the purpose of advantages which the publisher obtains by becoming a permanent member of your association he agrees to your association's regulations by which this distribution is made in respect of performing and other rights, so that thereby the author retains an interest and receives a revenue therefrom?—A. Will you let me put it in my own way?

Q. Yes?—A. The greatest benefit that the author derives to-day in my opinion is from the society, and he would not turn his rights over to a publisher if he thought that that publisher could, under that contract, claim his performing rights.

Q. I do not know. Possibly he would not; but I have seen a great many of these contracts?—A. They cannot, because they are contracts. We have specific contracts. Each publisher, and each author and each composer has a five year contract with the society.

Q. Quite so?—A. And during the duration of that contract he cannot assail it; he signed it.

Q. Would he be put out of your association if he did?—A. As a matter of law; he is bound by law.

Q. He is bound by law as a member of your association. Quite so. I do not doubt that your association is a great help indeed to the author, and that it has served a very useful purpose in respect of dividing, according to your regulations, and apportioning the income received among those various sources; but the legal situation, as I understand, and as I am advised, by competent legal authority, is this, that during the last many years the publisher takes an assignment of the copyright which is a complete assignment of the copyright and thereby becomes the owner under the terms of your legislation; but in view of the advantages which accrues to the publisher by being a member of your association, which is world wide in its scope, he agrees to the regulations of your association by which this distribution is made?—A. I am sorry to say you have been grossly misinformed in that respect, because there is no such thing.

Q. In what respect?—A. No such thing.

Q. In respect of what?—A. In respect that the publisher is willing to permit the composer and the author a share in the emolument of the royalties derived by the society because of the advantages that he, the publisher, got by joint use. That has nothing to do with the case. Here is a society organized away back in 1914. The composer signs his contract. That is for five years. That publisher takes, subject to that contract of ours—he takes full knowledge of the fact that there is an outstanding contract between the society and the seven hundred and some composers and authors.

Q. One moment. I may be wrong, you see, but my information was that many of the contracts still outstanding made with the publisher were made anterior even to the formation of your association?—A. Probably a few of them.

Q. And since the formation of your association many of them are made with the publisher in many cases before the author becomes a member of your association?—A. Now, that is not the fact.

Q. Is it not so that many authors come into your association from year to year although they have been authors for many years, and have made prior contracts with publishers?—A. At the beginning, yes. At the beginning of the society when we were organizing in 1914, yes, that was the case. In 1914. But I think it is important because there has been a great deal said in respect of this combination, and I think you ought to know, and I will not take more than a minute to tell it to you. I happen to be in the position. I was an attorney for

the music authors, and we found that inroads were made upon the rights of legitimate composers of dramatic and musical works such as operas, etc. A new form of entertainment developed, the cabaret—no charge at the door but a cover charge or a charge for checking a hat and coat, two dollars, three dollars, five dollars. They erected stages and took the song hits of a successful comic opera and with costumes and make-up gave these performances. An author tried to protect himself and he found he was met by an attorney for an organization, and he was met all along the line by organized groups of users. It came to the point—like a labourer who cannot protect himself against a combination of employers and was obliged to form a union, and so they formed a labour union—where they said, "there is only one way to cope with the problem and that is by organizing ourselves and therefore protecting ourselves throughout the country" The contracts were made. These publishers knew that these authors and composers were making these contracts. They never questioned to this very day these contracts, and while technically all the rights vest in the publisher yet I claim—

Q. You say "technically." You mean legally?—A. Legally; but they are stopped because they have permitted for seventeen years these contracts outstanding without question, and upon their expiration they permitted their renewal without protest, and I say they are estopped.

By Mr. Ernst:

Q. What proportion of modern songs produced in the United States do you control?—A. I should say about 60 per cent, I think, of the song literature and more is controlled by this society.

Q. That comes within the copyright provision?—A. Yes; I should think 60 per cent.

Q. Is there any other association?—A. There is no other association of any kind in operation save and except as associated, what we call associated publishers, who acquire some rights and try to collect some money from symphonic poems. Outside of that there has been no other society in operation. I might also say—

By the Chairman:

Q. Would you file the copy of the agreement under which your association is formed and the regulations under which it functions?—A. Yes, surely, with pleasure.

Q. And the contract which you make with authors— —A. Yes.

Q. —is a uniform contract? I think you have already agreed?—A. I said that.

Q. Then, in addition to that, I could hardly ask you to do it, but if you are able to do so, we would be very glad to have you file a few contracts between musical composers and publishers.—A. I will tell you what I will do with you, I will go one step further, and give you a record, an appeal in a case that I just fought out in the United States District Court, and which went to the Court of Appeal, so that you will have the decision, and you will have the contract. In that contract, 22 of them, so that there would be no question that I selected one—

Q. That is all in this case?—A. Yes. I would give you one that was the basis of litigation so there can be no—

Q. That is very good?—A. —doubt cast upon it. I will go one step further, because I think it is interesting. I will go over the matter, it will only take a few moments. An action was brought against us by the Association of Motion Picture Exhibitors to dissolve us upon the ground that we were a combination in restraint of trade. The matter was argued before a Justice of the Supreme

Court, and the application was denied. The Justice examined the officers of the association and found we were organized for the purpose of protecting ourselves against organized piracy. They said that before our organization was formed they got free music; they could play music and didn't have to pay for royalties; that what was wanted was to stop them, and since we were organized they were stopped. I should like the privilege of filing that decision with you.

Q. We should be very glad to have it filed for our information.

By Mr. Ernst:

Q. It did not go beyond the trial court?—A. It did not go beyond the trial court. Then another motion was brought against us by a gentleman by the name of Mr. Tuttle to dissolve us upon the ground that we were violating the Sherman Act, and he represented the broadcasting institutions—the Sherman Act in restraint of trade—

The CHAIRMAN: I think lawyers in Canada are familiar with the Sherman Act.

By Mr. Irvine:

Q. What you call an "anti-trust"?—A. Yes. That was brought by the broadcasting interests and Mr. Tuttle to get certain legislation to have the companies fix the prices—

The CHAIRMAN: Did this decision amount to any more than this, that your association was found by the trial judge not to be a combination in restraint of trade within the express terms of the Sherman Act?—A. No. Judge Gough went one further, he decided upon the common law principles. He said he found nothing wrong about this association, and—

Q. The end of it was, it was not held to be a combine?—A. We did nothing because, bear this in mind, when you want a particular song you go out and buy it; that is the song you want, and the song you get. We cannot sell you another song because you want Irving Berlin or you want—

Q. We have got beyond that in Canada; we have got this far. As usage goes here, you are asked to subscribe in respect of the whole repertoire.

Mr. CHEVRIER: Nobody asks for a certain song.

The CHAIRMAN: Before you state that as a fact, you had better read some of the communications we received.—A. That is just the difference, communications from one—a statement is one thing and a statement under oath is something else. We are sworn under oath, and we are liable for any mistakes we make.

Q. Others would be under the oath the same as you are.—A. Well, it was done for the purpose of representing here and making capital out of it. That is the reason the user has got to combine. The single song itself is not the slightest value to a musical man. If he runs a dance hall or a cabaret he has got to have around 81 songs for the night; if he runs a radio broadcasting station he has to have 20 songs per hour, and he has got to combine with other songs; he has got to have encores.

By Mr. Ernst:

Q. Take the case of my home town in the county of Lunenburg. We have a regimental band, which happens to be a voluntary organization and they give concerts in the open air, and they might give a half a dozen musical numbers in the evening. Would they not come within the notice that is given here?—A. Our experience has been this. As a matter of fact—

Q. Will you meet that contention?—A. Yes, all right. Now, that is a solitary case, and I am sure, in the first place,—

Q. It is not a solitary case; I can perceive a number.—A. Assuming you have a hundred such cases, assuming a hundred such cases, it is an easier thing for me to say, "Well, this is inconsequential". After all is said and done these people do not use it for the purpose of making any profit in the sense in which we understand it. In the States we would not ask for a royalty. We don't ask for royalties. We are after the motion picture theatre places, hotel proprietors, cabaret and restaurant places, dance hall proprietors and radio broadcasting stations. Churches don't pay and colleges don't pay.

The CHAIRMAN: As a matter of fact, I read the evidence.—A. They are not asked for anything. Regimental bands, we don't ask them for anything, and I will tell you now in so far as I am concerned instructions will be given to these performing rights societies to deal with this sort of case, because they are of no consequence; they don't figure in the scheme at all.

Q. Would you allow me just one word. I read the evidence given on behalf of your association recently, and I must say in the administration of your society, as appears from that evidence that your present statement is correct; but I do not understand that a performing right society of England or a performing right society of Canada accepted the same particular platform.—A. Well, they should.

By Mr. Ernst:

Q. May I just read this paragraph out of the booklet which was passed around this morning? Here is the portion of the paragraph, "The directors of military and brass bands are requested to take note that musical works the public performing right in which is controlled by the society may not lawfully be performed in public, by mechanical means or otherwise, without the society's licence or permission".—A. I am not, and I am sure in speaking for American societies, in sympathy with the attempt to collect any royalties from regimental bands devoted to the purposes and usage which you state; and I state this for the record, that we have not charged educational institutions or charitable institutions or churches or colleges, and we never will because that is chicken feed, that is not what we are after. They do not do us any damage. We are dealing with the important people, the users.

Q. May I say I have every sympathy with the author and the composer, and I am not out of sympathy with your society, but it is a matter of public policy whether you should be placed in a position where you can hold up those small concerns, hold up those small bands of music at some future time.—A. We have been in operation since 1912—

The CHAIRMAN: Wait a minute. Am I right in my understanding that so far as the administration of your rights in Canada are concerned they are now vested in the Performing Right Society of Canada in respect of which you own half the stock?—A. Yes, that is right.

Q. And therefore the inhibition which you have voluntarily placed upon yourself in the United States does not apply to Canada except in so far as the Performing Right Society of Canada imposes those same inhibitions upon its own administration?—A. As the largest proprietor of this institution, if I may so call it, the American society certainly has the right in view of the fact that it has in its membership Canadians and others, it certainly has the right to suggest to the Canadian society the impropriety of collecting royalties from regimental bands or from the kind of performances mentioned. I want to say to you now, I have never collected a dollar—they are all here, radio broadcasting people are here, and the motion picture people are here, and they can call who they like or anything they like, they are the ones who are here and these are the fellows we are after, and I challenge them as a whole to point out a single instance of a case where—

Mr. ERNST: I don't think there will be government interference, as a matter of fact, unless you abuse your privileges. On the other hand I do not see why you object to the government being in a position, or the Governor in Council being in a position, if you abuse your privileges, to remedy that and protect the people.—A. May I answer that. You have got a provision here asking for prices to be fixed.

The CHAIRMAN: No, we have not.—A. I saw one this morning in the act.

Q. I did not.—A. Let me state my experience. Take for instance a little radio station we will say, down in West Virginia. Its total receipts from advertising is, say, $100,000 a year, expense of operation is about $50,000 a year; the population served say, is 200,000. With a station like that, if it pays $1,000 or $1,500,—

Q. They can afford to pay their fee.—A. Along with other expenses, but you take the larger stations—

By Mr. Ernst:

Q. WGY and WJZ?—A. Yes; they are serving a population of ten millions. Their vice president offered a statement to the Federal Radio Commission in which he said that radio is earning a billion dollars a year—

By the Chairman:

Q. Not one particular station?—A. No, but radio in America.

Q. All the stations?—A. Yes; a billion dollars a year. That is in the records, one billion a year, and he says, "don't lose sight of the fact that music is the background of the whole thing". And then there are the commercial stations and what they sell is, you know, tooth powder and things that are purely commercial, and where a station earns a tremendous sum of money from advertising hook-ups throughout the United States and they pay $20.000 a year——

The CHAIRMAN: The only suggestion in the bill is that those users will be given an opportunity before a proper tribunal from time to time if they find the charges oppressive, to ask that an inquiry be held as to whether they are oppressive.—A. Why do it to us when you have got—there is some talk of a radio monopoly in the United States, and the government has brought an action to dissolve it. We know that they have 2,000 patents and they are trying to do the same thing as they tried to do when they came before the Congress and wanted the United States Congress to pass compulsory rates.

Mr. ERNST: I do not think this parliament should fix rates.—A. I have heard you have got a radio monopoly, why don't you cover that?

The CHAIRMAN: At the present time there is an inquiry being had into the radio monopoly in Canada, although it does not exist to the same extent and I think that the same thorough examination will be made of the alleged radio monopoly in Canada as is now being made into the operations of the Canadian Performing Right Society, which has the sole control of all your works in this country?—A. Here is a monopoly. All that Canada has ever paid for performing rights since the enactment of the first Canadian copyright bill is a total of $35,000.

Q. Simply for the reason that you never were in a position under our law to enforce it?—A. I beg your pardon.

Q. I beg your pardon.—A. The individual author could have brought a suit.

Q. The individual author, certainly.—A. Yes, he could, during all those years.

Q. He never has.—A. Well, I know, but you are talking about a monopoly. Now there is your monopoly, a matter of $35,000. I would like to know how much other monopolies operating in Canada have——

Q. We are asking for this act; we are asking for those restrictions so that your association, if it is doing business in Canada, and any other association doing business in Canada including the Canadian Performing Rights Societies, will have undue restrictions imposed upon them in respect to the collection of their fees, charges and royalties.—A. Mr. Secretary, for the purpose—I take the position, for the purposes of protection of the authors it makes very little difference as to this. These authors can bring their suits; they can bring their actions; they can bring their suits and protect themselves.

Q. Quite so.—A. Because this is only a step; this is only a step, a move upon the part of the broadcasting end and their allies, and I don't want——

Q. It is not a step on the part of the broadcasters or allies; and let me tell you further if there is any pursuance in the terms of this bill which prevents the individual author from collecting and enforcing his rights in Canada as they have heretofore existed, I am prepared to consider the modification of this bill but I do not understand it is so restricted.—A. Mr. Secretary, I think these gentlemen are chasing shadows, because if our authors are being despoiled of their work we do not need any Canadian Performing Right Society. We live under a treaty of both nations. We can bring actions under the name of our authors and our authors can maintain their actions against those broadcasters and against those other users and compel them to respect the rights of those people. I mean, if it is for the purpose of fixing rates, let's have it.

The CHAIRMAN: We are not fixing rates for individuals. If this amendment, section 10 should pass I understand there is nothing in our Canadian act or in the amendment proposed which would prevent the author in the United States or this country or the author of any foreign state or an author who is a Canadian national domiciled here, from bringing suit in exactly the same way as suits are brought to-day in the United States, because in each case in the United States' courts as I am instructed, the author has to be joined.

The WITNESS: Then what is the difference? Let us take the practical side of the situation now, what are you aiming at?

The CHAIRMAN: That is another question I am not discussing for the moment, but I am saying that so far as this bill is concerned it does not prevent your entering suits in Canada in exactly the same way as is done from day to day in the United States.

The WITNESS: Well now, here is our objection to the bill: In the first place, the means of fixing the rate for each work, because we do not fix the rate for each work. We have never done that. We have never, in our seventeen years of experience fixed the rate for work. We do not know how to do it.

The CHAIRMAN: Wait a moment, let me enquire: When you bring a suit in which the plaintiffs are Thomas Jones, author, and your American society of composers, authors and publishers as join plaintiffs, does it not depend upon the court as to the amount of the award in each case?—A. No, because under the statute the minimum damages is $250, and the court allows us $250 for that illegal performance.

Q. That is a penalty clause?—A. No, it is not a penalty because the Act defines it as being liquidated damages.

Mr. ERNST: It would be a penalty here, certainly a penalty at common law.

The WITNESS: In other words, under your law the court would fix whatever damage was done to the author.

The CHAIRMAN: Of course, under our law the same distinction does not prevail.

Mr. ERNST: We have the common law.

By Mr. Chevrier:

Q. How should you proceed under sub-section B?—A. We have no method of determining the value and the price for each work, each individual song. You have popular songs; you have all sorts of works, and besides that we have never granted individual rights.

Mr. ERNST: Could you work it out if you dealt with them by class instead of individually.

Mr. CHEVRIER: If they put them in classes what would happen to the individual that came for a song.

The WITNESS: We could not, it is utterly impossible. Take the actual experience of seventeen years, and I say to you upon my oath that I do not know of a case during all these seventeen years where a user, I mean a motion picture man or broadcaster—

The CHAIRMAN: Oh, well, but let us go to some other users now, let us go to church choirs.

The WITNESS: We never exacted a nickel from a church choir.

The CHAIRMAN: You stated that and I agree that that was the evidence before your congressional committee, but I do not understand that that is the position that is taken by the Canadian society, and it is certainly not the position taken by the British society.

The WITNESS: Speaking for the American society, we will have to take that position, because we will not subscribe, in principle or in theory, to the levying of royalties, the collection of moneys from church choirs, and churches, or regimental bands.

By the Chairman:

Q. Have not you stated that position pretty well.—A. Yes. One more point and I am through. We cannot comply with B. A will be very costly, but with B we cannot comply, because we have no way of determining the price of each work. 2:

> The Governor in Council on the recommendation of the Minister, is authorized from time to time to revise, reduce, increase or otherwise prescribe the fees, charges or royalties which any such society, association or company may lawfully collect in respect of the issue or granting by it of licences for the performance of any of such works in Canada.

We are absolutely convinced that is a price-fixing scheme and we say the government should not embark on this price-fixing, but if they are then it should be universal.

Mr. ERNST: The answer to that, of course, is that in most instances the users do not come under the direct control of this parliament.

The WITNESS: They have copyrights, every picture is protected by a copyright.

The CHAIRMAN: In so far as it deals with copyright, yes.

The WITNESS: Yes, every motion picture.

The CHAIRMAN: But in so far as it deals with church choirs and exhibitions and fairs, and all that sort of thing—

The WITNESS: Yes, but motion pictures, if you are going to do this we say make it universal.

The CHAIRMAN: Well, perhaps we will. We are going along that road. From what information I have received, public opinion is very strong in this country that we should proceed along that road.

The WITNESS: All right, if it is universal, then, of course we are in the army and we cannot help it. But we refuse to be singled out.

The CHAIRMAN: Well, that is a strong position.

The WITNESS: We say take the patent holders, take the radio people, take the motion picture people—and this parliament has jurisdiction over patents and copyrights—and place them all upon the same footing, and then I say yes.

Mr. ERNST: I do not think this parliament could regulate the price to be charged for a motion picture theatre.

The WITNESS: I think I have covered the ground.

The CHAIRMAN: I think that what you have covered is very good, and it has been very informative to me.

The WITNESS: To go back just for a second, and I will be very brief—you have been very courteous—in section 5 we would like to have the same wording as the Rome convention.

The CHAIRMAN: We understand that. That has already been brought up.

The WITNESS: Section 6 is taken from the American law, whereas now the changes are fixed by common law. Now, the judge fixes it, so that you have different judges, there will be no fixed standard for each is going to decide differently and you will never get anywhere.

The CHAIRMAN: That is so in every action for damages. But it gives you an advantage. That section 6 gives you an advantage in this that the plaintiff shall be required to prove only receipts or revenues derived from the infringement, and the onus of poof in other respects is placed on the defendants. That is an advantage to the copyright holder.

The WITNESS: Quite right. The only objection I find is that such profits as the court may decide to be just and proper and you are going to have different standards. In America the standard is set at a certain sum of money; it is uniform and applies to all cases.

The CHAIRMAN: Our administration, of course, is different from yours in some respects, and one reason why this draft, giving certain concurrent jurisdiction to the Exchequer Court of Canada, which I think might well be restricted to certain amounts, as the Exchequer Court will then determine the procedure and the basis on which damages will be assessed.

Mr. ERNST: I would not be prepared to depart from our common law rule in the assessing of damages.

The WITNESS: I am afraid you are going to have confusion.

Mr. ERNST: Sometimes you get too much and sometimes you get too little.

The WITNESS: Then with regard to 9 there ought to be some time in which to file an instrument. Under our law we have, I think, three months. There ought to be some limit. We ought to get an opportunity.

The CHAIRMAN: If there is any doubt, we can modify this clause. It has been brought to my attention that in very numerous cases assignments have been made in the United States in which the author—I do not accuse him of fraud at all—thought that he was giving an assignment covering the territorial jurisdiction of the United States, but on examination these assignments have been found to be so worded as to cover Canada and Mexico, and other countries as well. The same author has then come to Canada where there is no knowledge of this assignment at all, and has made an assignment in Canada with respect to the same copyrighted work for this territorial jurisdiction, and it seemed to me after

hearing all these arguments, because I have been through this argument before in the representations made to the Secretary of State as representing the government, and it seemed to me that a performer who is honestly endeavouring to conform to the law, who is willing to pay royalty fees and charges, who is shown an assignment covering those particular works for Canada, which he is bound to accept in good faith, should not be liable to further action, if he pays to this assignee—

The WITNESS: The user is protected under section 22, because he is not aware that he is infringing.

The CHAIRMAN: Well, our courts allow so much in the way of presumptive evidence.

The WITNESS: The only difficulty with that is this: If an assignment is executed, say, in England, it will take a week at least for the assignment to get over. In the interim the man could make another assignment. There is no way of getting the assignment over.

The CHAIRMAN: You can set aside the assignment here. The same rule applies to patents. The same rule applies to bills of sale. The same rule applies to a great number of instruments.

The WITNESS: The wording of this is going to interfere a great deal in connection with transactions involving Canadian authors. As I said at the outset Mr. Service and all those gentlemen come down to New York and do business, and there is something about this law that complicates the situation. You are going to make it pretty hard for those men.

The CHAIRMAN: I am simply putting upon him this obligation, that he shall not make two conflicting assignments. If he does make two conflicting assignments, then you are in no worse position than the man who has obtained a prior contract in respect of any other matter which you are not compelled to register.

The WITNESS: Except this: In the case of an ordinary contract you do not have to register it, but here you see that if the subsequent assignee registers his assignment, why, he secures the prior right.

The CHAIRMAN: Well, if you deal with people who are dealing with you with fraudulent intent the public should not necessarily suffer.

Mr. ERNST: You have a remedy, of course. If you lose anything you can always come back on the individual. For instance, if I give a bill of sale on my property to you in the Province of Ontario or the Province of Nova Scotia, where the laws are practically the same, you have to register that bill of sale, file it. Before you file it, I give another one to Mr. Cahan in good faith. He takes it in good faith and he files it first, he gets legal title.

The WITNESS: Say, for instance, Mr. Service has written a novel. A motion picture company conveys that novel, and spends $200,000 to make a motion picture. Of course, Service would not do that sort of thing. If he should happen to make an assignment to someone else within a week, and during that week this man has lost $250,000—

Mr. ERNST: Of course, it is the same situation I have given with the bill of sale.

The CHAIRMAN: Let me tell you, Mr. Burkan, the amendment to this section 40 wipes out conditions which you find it difficult indeed to comply with, in fact impossible. It, therefore, gives you that advantage. The registration only costs $1.00 in any case. Therefore, if you were entering into a contract with a film company for a large amount, why, what you would do the moment you made that contract would be to send in a dollar and register that assignment.

The WITNESS: Right.

The CHAIRMAN: And so long as we allow you to do that, at the same time allowing you to enquire, for another dollar, and find out whether there is another assignment, for the expenditure of $2 you can protect yourself absolutely.

The WITNESS: That is right, but suppose to-day on the 18th May I made enquiry, everything is in perfect order, and I pay the man $10,000 for the rights, and this transaction took place in England the next day. The first gentleman in Canada made a transfer to the John Jones company and they filed the assignment.

The CHAIRMAN: Then all that you ask us to add to that clause is that you may estop another registration by sending a telegram to the Secretary of State's Department or the Copyright Branch. You can do it on the same day. You can give notice by telegram.

The WITNESS: If you give us time it is all right. Give us the mailing time.

The CHAIRMAN: It is not a question of mailing time. Why shouldn't we make it necessary in the amendment to that clause that you may telegraph and procure an estoppel.

The WITNESS: If you do that that will be satisfactory to me, speaking for myself, so long as you are giving us an opporunity to file an instrument or give notice of some sort, because it takes time to send a document.

The CHAIRMAN: That is a suggestion that is well worth considering.

Mr CHEVRIER: When Mr. Jamieson was giving his evidence on that I made a note that counsel for Mr. Jamieson would submit or draft a section that would suit, as a sort of suggestion. Then why could not these parties do the same thing.

The CHAIRMAN: There is no objection to any suggestions being made.

Mr. CHEVRIER: Then in committee we can thrash it out.

The CHAIRMAN: Quite so.

Mr. ERNST: Can you draft an alternative suggestion which you think might meet your wishes and give it to us for our consideration.

The WITNESS: Yes, I shall be very happy to.

Mr. BUCK: Mr. Chairman, may I be permitted to explain a matter regarding special permission of the copyright owner which Mr. Jamieson was unable to answer. When we issue a blanket licence to a broadcasting company, we put a clause in there that we have the right to withdraw from the broadcaster a number of certain numbers. I will explain what that is for.

The CHAIRMAN: You agree to produce that form of contract for our consideration?

Mr. BUCK: I want to explain. The inquiry was aimed at the reason why that particular phrase was utilized so much. It is for this reason; when we withdraw a number from the air—if I have a song from the Ziegfield Follies, Mr. Ziegfield may say, "take that off the air, they are killing it." Those instruments are so powerful that they can kill a number within a couple of weeks. People get sick of it. Consequently, if there is, say, a special program to-night we may withdraw that from all broadcasting stations on the air. Now, to-night the Palmolive Oil people may be on the air at a certain hour and want to use that number. We let them sing it with the understanding that they have the special permission of the copyright owner so that all other broadcasters could not use it when the number is withdrawn. That is the reason. I wish to express, Sir, my deep appreciation for your courtesy and your patient treatment in listening to us. We are at variance on some ideas, but we are talking about the same thing like the spring of the year and the spring of a watch.

The CHAIRMAN: Your representations will receive very careful and earnest consideration from the committee. I think as it is now nearly six o'clock we will adjourn until 10.30 a.m. to-morrow.

The Committee adjourned.

SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 3

TUESDAY, MAY 19, 1931

WITNESSES:

Mr. Ralph Hawkes, Director, Canadian Performing Rights Society.

Mr. Gitz Rice, Composer, Montreal and New York.

Mr. John A. Cooper, President, Motion Picture Producers' and Distributors' Association, Canada.

Mr. Gordon V. Thomson, Authors' and Composers' Association, Canada.

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1931

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

TUESDAY, May 19, 1931.

Pursuant to adjournment and notice, the Committee met at 10.30 a.m.

Members present: Messrs. Bury, Cahan, Chevrier, Ernst, Irvine and Rinfret —6.

Minutes of proceedings of meetings of committee held on Monday, May 18, read and adopted.

On motion of Mr. Chevrier:

Ordered that a summons do issue, through the Clerk of the Senate, to Mr. Louvigny de Montigny, Chief Translator (Laws), The Senate, Ottawa, Canada, to attend and give evidence before the Committee on Thursday, May 21, 1931.

Mr. Ralph Hawkes, London, England, Director, Canadian Performing Right Society; Director, Performing Right Society of England, was called, sworn and examined.

Witness retired.

Mr. Gitz Rice, Composer, Montreal and New York, was called, sworn and examined.

Witness discharged.

The Committee adjourned until 4 p.m. this day.

T. L. McEVOY,
Clerk of the Committee.

AFTERNOON SESSION

TUESDAY, May 19, 1931.

Pursuant to adjournment, the Committee met at 4 p.m.

Members present: Messrs. Bury, Cahan, Chevrier, Ernst, Irvine and Rinfret —6.

Mr. John A. Cooper, Toronto, President, Motion Picture Producers' and Distributors' Association of Canada; and representative of The Province of Quebec Theatre Owners' Association; of the Independent Theatre Owners of Ontario; of the Motion Picture Association of Manitoba and of the Saskatchewan Theatre Owners' Association, was called, sworn and examined.

Witness read telegram from N. L. Nathanson, filed as Exhbit "L"; also, telegram from William Yates, Secretary-Treasurer, Independent Theatre Owners of Ontario, filed as Exhibit "M"; also, Resolution from Motion Picture Association of Manitoba, filed as Exhibit "N"; also, copy of leter to H. T. Jamieson, President, Canadian Performing Rights Society and copy of reply thereto; filed as Exhibit "O".

Documents tabled:

P. Fees charged in England by Performing Right Society;

Q. List of Canadian composers not members of Canadian Performing Right Society;

Witness discharged.

Mr. GORDON V. THOMSON, Toronto, Authors' and Composers' Association of Canada, was called, sworn and examined.

Documents tabled:

R. List of Executive Officers of Authors' and Composers' Association of Canada;

S. Memorandum of above Association dealing with Bill No. 4;

T. Report of Committee of Canadian Authors' Association on Canadian Musical Compositions.

Witness discharged.

Committee adjourned until Wednesday, May 20, at 10.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

TUESDAY, May 19, 1931.

The Select Standing Committee on Bill No. 4, an Act to amend the Copyright Act, met at 10.30 o'clock a.m., Mr. Cahan in the Chair.

Minutes of the last meeting read and approved.

The CHAIRMAN: The first witness to-day is a representative of the Performing Right Society of England.

Mr. CHEVRIER: Mr. Chairman, before you proceed with calling evidence I should like to make a request of the committee. The other day I referred to two witnesses who might appear. I am only submitting now the case of Mr. de Montigny. I know what interests Mr. de Montigny represents, and I am going to take upon myself the responsibility of asking this committee that a summons do issue to order Mr. De Montigny to appear. He is an author and he represents certain rights of authors.

Mr. ERNST: Who is Mr. de Montigny?

Mr. CHEVRIER: The chief translator of the Canadian Senate. He has appeared before other committees dealing with these matters and no objection at any time was taken as to his attitude, or what he had to say; and I move that summons do issue for him to appear.

The CHAIRMAN: I stated clearly I had no objection to the committee summonsing Mr. de Montigny or anybody else. Is it the wish of the committee that Mr. de Montigny be summoned?

Motion carried.

RALPH HAWKES called and sworn.

I am director of the Canadian Performing Right Society and a director of the English Performing Right Society. I reside in London, England.

By the Chairman:

Q. Have you any address in London, England, where communications may reach you? —A. 83 Picadilly street.

Q. Will please state in your own terms such information as you can give us to help us to solve the issues raised by the bill now before this committee. —A. I understand, Mr. Chairman, you would just like me to state my objections to some clauses.

Q. I should be very glad if you would.—A. My first objection is to section 5, which has already been stated by previous witnesses. We would like a change in the wording of the revised Convention of Rome, instead of the restricted wording which exists at the moment in the bill. We would like either the word "publication" struck out, or so amplified as to cover all types of performances, representations, reproductions or other executions.

By Mr. Bury:

Q. What section?—A. Section 5.

Mr. CHAIRMAN: We have that objection already.

Mr. CHEVRIER: Are you prepared to submit a clause? As I Understand it you are satisfied with 6 bis of the Convention or an amendment to this. Have you a proposed amendment?—A. I have not written a proposed amendment, but I can submit one.

The CHAIRMAN: It is fairly simple. You wish the word "publication" struck out, and three other words put in?—A. Yes.

By Mr. Ernst:

Q. Printed performances, operation, or reproduction?—A. Yes.

Q. Or any distortion, mutilation or other modification?—A. Yes, so long as it fully covers every type of performance.

By Mr. Chevrier:

Q. We might do that.—A. I think we will accept the convention wording.

Q. You would rather have the convention wording?—A. That makes it quite clear. Section 9, on the question of the voluntary registration, I would rather like to leave the legal argument to Mr. Anglin, who will follow. In connection with this prior assignment, we like the clause as it is, the voluntary registration is just what we would like.

By Mr. Bury:

Q. As it is provided by the bill?—A. Yes, the latter part which deals with prior assignment is a question of legal argument, and I am not a lawyer and I would like to leave it to Mr. Anglin.

Section 10, this is the section which I think causes very grave difficulty and will be impracticable not only for us, the society, but will be more impracticable for the user of music, and if I may I should like to read a few things in this matter. It is quite short.

Filed lists are unnecessary because the named of the publisher almost invariably appears on a musical work and the Canadian Performing Right Society issues freely a list of the publishers, who musical publications it controls, and in any case of doubt as to a specific work an inquiry of the Canadian society can be made and will be met. The position, in this respect, was fully investigated by the select committee of the British parliament on the examination of the Musical Copyright Bill, 1930. The findings of the select committee were, "The society has offered to circulate regularly to its licensees a complete list of all its publisher members. As the name of the publisher is always to be found on copies of music, and the society controls the performing rights in all the musical works issued by publisher members, such a list affords a guide to a very substantial proportion of the popular type of music, in respect of which most of the difficulties have arisen. Where a work bears the name of a publisher not a member of the society, the licensee can refer to the publisher. The offer of the society in the view of your committee goes a considerable way to meet the complaints made."

These are the findings of the special committee on the Musical Copyright bill, and one of the main objections raised by the users of music was that they had no means of finding out what music was controlled, and what was not.

By Mr. ERNST: I am not familiar with what the English bill was. Did they propose anything similar to what we are proposing here?

The CHAIRMAN: Not that, I should say. They proposed, (1) to make it compulsory that a printed notice of reservation of those rights should be printed on every copy of the work as a condition of the re-

tention of the performing rights in musical works, and (2) to provide a compulsory license in respect of performing rights, insofar as they have been retained by printing the required notice, with a fixed maximum applicable to the fee which the owner of the performing rights may demand from the music owners.

Those were the two demands made.—A. During the course of the evidence a very strong allegation was made against the society that it would not disclose what works it controlled.

Q. You have given the answer.—A. If I might go on, this is my statement. Apart from these considerations, the practical difficulties of filing complete lists of works are insurmountable. The filing of the lists would entail an enormous amount of labour not only on the part of the Canadian society, but also on the many other societies it represents in Canada, whose combined repertoires are estimated to contain approximately three million works. A considerable proportion of these repertoires may never be performed in Canada, with the result that the societies would be put to much unnecessary labour and expense; for if the lists are to be "complete," particulars of the whole of the repertoires must be filed.

It is submitted that the suggestion—

By the Chairman:

Q. Just one moment. I should like to suggest, only the whole of such repertoire as your association proposes to license and receive fees for. You can keep out anything you like.—A. The user might desire to use one specific work which would not be in the list; we would not be in touch with it, in order to make it complete—

Q. Quite so.—A. In order to make it complete for the user we must file the whole list.

The CHAIRMAN: We will argue that later.

Mr. RINFRET: Perhaps I might put a question to the chairman, because there are different opinions as to what that clause 10 means. I surmise that the meaning of the clause which says that the society must file complete lists is that the society will be allowed to exact fees only on works which appear in those lists.

The CHAIRMAN: That is the intention.

Mr. RINFRET: It cannot possibly mean that unless the society files a complete list of every work that comes to the society then no fee can be exacted on any of them?

The CHAIRMAN: No.

Mr. RINFRET: There is no doubt as to the meaning of the clause.

The CHAIRMAN: If there is any doubt we can make it clear.

Mr. RINFRET: It may have a bearing on what evidence we hear. I think some students of this bill have interpreted the clause to mean that unless a company files everything they have they will not have the right to exact fees on any work. My interpretation of the clause is—and I think the intention of the minister is—that fees can only be exacted on any work that has been filed, irrespective of other works which may not have been filed, and yet be in the possession of the society.

Mr. CHEVRIER: You can easily remedy that. Is that the intent?

The CHAIRMAN: I think it is the intent. However, you find the penalty in the next clause, subsection 3.

Mr. RINFRET: It is clear that when we read this clause we may make it read that way. I saw the witness was travelling under the distinct impression

that that was the meaning of the clause. He may have thousands of works; he does not have to file them all, but he will not be able to receive fees save on such works as he has filed. That is the meaning of the clause.

Mr. BURY: The objection is that you won't be able to collect a fee on the performance of works not filed.

Mr. RINFRET: That is the meaning of the clause.

Mr. ANGLIN: Do we take it, sir, that that clause will be made clearly in line with what is now supposed by this committee to be the intent? That is, that only a list of what it is intended to collect fees for need to be filed, and that the business of filing a list of other works will not interfere with the collection of fees in respect of works which are upon the file list. That will be made clear.

The CHAIRMAN: And I submit that any evidence given against the filing of the complete list is not necessary because it is not intended to be compulsory so to do.

Mr. ANGLIN: Does the wording in the section as it stands now make it possible?

The CHAIRMAN: I am agreeing with your contention.

Hon. Mr. RINFRET: That is the meaning I put upon the clause.

The CHAIRMAN: I agree with the statement made by Counsel just now.

Hon. Mr. RINFRET: Well, that is my statement.

Mr. ANGLIN: Might I ask one further question, all with the view of shortening matters. According to the intent of the committee, which will be carried out I am assuming by the Bill, if it is passed at all, it would still be the case that the society would be put to an election as to which of these two and a half million of existing rights it would want to preserve?

Mr. CHEVRIER: That is the impression I got.

Mr. ANGLIN: Therefore, the intent of the bill as it stands is to take from the society all its property except—

The CHAIRMAN: Not at all.

Mr. ANGLIN: Pardon me, sir, I have not finished,—except that as to which it files lists.

The CHAIRMAN: Not at all.

Mr. ANGLIN: Then I misunderstand. Now, if that is so—

The CHAIRMAN: That is not so. There is no taking from the society any of its property whatsoever.

Mr. CHEVRIER: We are just working in a vicious circle. If they want to retain their right in all of them then they will have to file all, or it only accords a half or one-third protection.

Mr. ANGLIN: Absolutely. Therefore, we come back to this and I want to get it clear—

The CHAIRMAN: We are not dealing with property rights at all. We are not dealing with your ownership of property rights. We are not dealing with the right of an author to collect in respect to any work—

Hon. Mr. RINFRET: I do not want to discuss the merit of the clause just now, and we do not need to hear evidence on something that is not necessary.

The CHAIRMAN: I do not think we need discuss it further. It is clear as to what is intended.

Mr. ANGLIN: I am afraid, sir, that perhaps we are not using the words "property rights" in the same sense. My understanding of our property right is that it includes the right to collect, and to collect necessarily by proper legal proceedings.

Mr. ERNST: It affects the right to collect but does not affect the property right as such.

Mr. ANGLIN: Well, whether it be the property right or not—

The CHAIRMAN: Mr. Anglin, I do not think this is the time for argument.

Mr. ANGLIN: May I put it this way then for the present, that it is the intention of the Bill—and we will keep away from property at the moment—that we shall have collecting rights only in those compositions in respect of which we file and that we shall not have collecting rights in the rest.

The CHAIRMAN: I will put it another way. You shall not have collecting rights, if you so call it, in the courts of this country in respect of any work which you have not included in the list filed with the department.

Mr. ANGLIN: Yes.

Mr. CHEVRIER: That means, in order to save the whole of your property you have to register everything.

Mr. BURY: You have your property rights, you have your collecting rights, but the law will not give you power to enforce your collecting rights in the courts except in respect of the works which you file.

The CHAIRMAN: The clear intent is that you shall only be entitled in Canada to collect fees, royalties or charges or performing rights in respect of those works which are included in the list filed. Now, whether that is a diminution of property right or a diminution of collection right, don't we understand the intent of the section?

Mr. ANGLIN: I will argue that later. Then the witness will assume that unless we file our two and a half million list we will not have rights of collection in the courts, insofar as it is not completed.

The CHAIRMAN: And you will understand the other alternative, which is the fairer way of putting it if you will allow me to say so, that you will not be permitted to collect fees, charges and royalties except in respect of works which included in the lists which you from time to time file with the department.

Mr. ANGLIN: Therefore, if we do not file the list we lose our right of collection.

The CHAIRMAN: I will remind the reporter that under the rule of the House argument of this kind is not to be reported.

Mr. CHEVRIER: I want everything I say here to go down on the record.

Hon. Mr. RINFRET: I have been on many committees and I have never seen the evidence or the discussion cut out by the Chairman. What is the objection? Is the Chairman afraid that something might come up.

The CHAIRMAN: I have no objection, of course, myself personally to any report, but yesterday I received from the Clerk of the House those further instructions:

> That the members of the staff of official stenographers to the committees of the House are hereby instructed that their duties are limited to the reporting of evidence given before such committees. Beyond the mere noting of objections raised and the Chairman's ruling thereon, which is necessary to render the record intelligible, discussions in committee are not to be taken down in shorthand and transcribed.

Mr. CHEVRIER: Well, there it is, "to make the report intelligible;" surely it is necessary that we should have expressions of opinions from the Chairman. Let the record stand as it is.

The CHAIRMAN: So far as the questions put by Mr. Anglin and the answers given to the other members those should stand, but the mere interlocutory conversation which followed I do not think is part of the record.

Mr. IRVINE: This is a matter of the rules of the House, the rule of this committee, as I understand it. I have been on several committees, and unless we have power from the House for a verbatim report—

Mr. CHEVRIER: We have.

Mr. IRVINE: I do not think we have. However, the reporter is taking everything down. In other committees of a similar character that I have been on no argument was ever reported. I often wondered who did the editing, but it was done.

The CHAIRMAN: When you are prepared to hear the witness we will proceed.

The WITNESS: If I may continue:—

It is submitted that the suggestion that lists of works controlled should be made available to the public is put forward not because there is any real difficulty in ascertaining what works are controlled, and not because the proposal would remove in a practical manner any difficulty if one did exist, but simply with a view to embarrassing the Society by imposing upon it a difficult, onerous and expensive task. It is to be noted that the greater the operating expense of the Society the greater must be the fees charged for the licence to perform.

If the justification for the provision as to compulsory filing of lists of controlled works is the assertion that it is impossible, without some such provision, for persons to know when copyright works are being performed, it should be borne in mind that the Copyright Act provides that the term for which copyright shall subsist shall ordinarily be the life of the author and a period of fifty years after his death. At the very least, therefore, every work published during the last 50 years is copyright and some person owns the sole right to perform the work and, until the owner's permission has been obtained, no person has any right whatsoever to perform the work in public.

The effect of the proposed provision, therefore, would not be to give persons warning of copyright, for they know already that the work is copyright; all it would do would be to enable infringers to perform works with impunity and without payment, so long as it was first ascertained that the work was not included in the list filed at the copyright office. Or, to put the matter in another way, an infringer will know that he is infringing someone's copyright, but will know that he can get off scot free because that work has not been included in the list. He will be fully aware that he is defrauding somebody of the fruits of his brains and his industry and will be himself profiting out of them at his expense, without any fear of being brought to book, just because the author has not complied with a formality to abolish which, once and for all, was the whole object of the Berlin Convention, and this in spite of the protection amply afforded to Canadian authors by and in all the other countries which are parties to the Convention.

It is submitted that it is, in fact, impossible to file complete lists because new works are being created daily throughout the world by the authors and composers represented by the Society.

It is submitted that this requirement is contrary to the Berlin Convention, impracticable, unnecessary and aimed to embarrass the Society.

Section 10 (1) (b):

It is submitted that this provision would also be a "formality", and apparently a condition precedent to the exercise of the author's exclusive right; therefore, it is in conflict with Article 4 of the Convention, which provides that the enjoyment and exercise of the author's rights shall not be subject to the performance of any formality.

By the Chairman:

Q. As soon as they come within the control of your company what is to prevent you filing?—A. If we started to it, we could file weekly or monthly, but we could not start to file a list of two million works, it would take us months.

Q. A month to do the typewriting.—A. Typewriting or printing, whatever it is.

Q. Well, you must know. Your officials stated yesterday on oath that on application to your company in Toronto one could ascertain whether a particular work was controlled by that company or not.—A. Yes.

Q. Therefore, you must have ascertained what works are controlled by your company.—A. With reference to a publisher's catalogue.

Q. With reference to a publisher's catalogue.—A. Yes.

Q. Well, you were not able to say that all works in the publisher's catalogue were works in which copyrights exist.—A. There are occasionally works—

Q. I know and, therefore, if you are going to impose upon the people of Canada, are not you morally compelled to furnish a list of the works in respect of which you claim to be entitled to collect fees, charges and royalties.—A. If we are allowed to file catalogues of works that will be satisfactory.

Q. I do not know that your catalogue contains a list of the works. It is simply a question of typewriting, and if it is a mere matter of relieving your company of a typewriting charge, why, that is one thing.—A. It is a stupendous task to compile those lists.

Q. The compilation of those is a mere matter of typewriting. Your society approached me in London, with a large delegation, claiming that under the present registration clause you were compelled to file duplicate assignments. That was the first objection. Secondly, that you were compelled to pay $1 on each assignment. You said that charge was so great as to involve the cash payment of $2,500,000 to $3,000,000.—A. Yes.

Q. That, of course, is exorbitant, but when you are allowed to file without paying a cent and you are relieved of all the charges, then why should you object to doing mere typewriting.—A. Because I venture to suggest that such a list when filed will never be referred to by any user.

Q. I will undertake to put it in such condition that it will be referred to, and, if I continue to be Secretary of State, it will be put in such a condition that, on receip of a telegram, or postcard or letter of enquiry, we will be able to notify any person who makes application that it is a work with respect to which you claim to be entitled to exact royalties.

By Mr. Chevrier:

Q. How many titles would you have to file?—A. We would have to start with the filing of two and a half million titles.

Mr. CHEVRIER: Maybe the Minister can say how long it would take the department, or the officials of the department, or how many officials it would take to properly catalogue two and a half million titles.

The CHAIRMAN: I do not know, but the matter is so important that I do not think the public of Canada would object to the cost.

Mr. CHEVRIER: In the meantime, and until the department is able to say that it has catalogued or completed the list, then everything you have remains in abeyance.

The CHAIRMAN: Oh, not necessarily, nothing will remain in abeyance.

Mr. CHEVRIER: Then, of course, in the meantime all of these works not having been filed can be pilfered.

By Mr. Irvine:

Q. The task of filing would not be onerous in a few years, would it? It is only the immediate task.—A. The initial task is stupendous, and very costly, because we have to find from all the European societies their lists of works.

By the Chairman:

Q. Take, for instance, in England, because the society in Canada has not functioned because of section 40 in the existing Act which we are now repealing. But the society in England has functioned, and did you not state, or someone on behalf of your society, in England, as to the number of works, comparatively a modest number, with respect to which performing rights had been granted in England; it was down to the thousands.—A. We have a current list in England of approximately two to three hundred thousand works. Those are works that are being currently performed, but that does not cover the occasional performance.

Q. Quite so, and there is nothing in this Bill, if I understand it, which prevents you in the name of the author, or which prevents any attorney in the name of the author, collecting in respect of any works whether they are filed in your list or not.—A. Yes, I quite appreciate that, sir, but at the same time—

Q. That is all the right you have ever had.—A. Supposing one work is performed, and is not to be performed again for two or three years, we will have lost our right to collect.

Q. You, as a company, have lost your right, but the author and the owner of the copyright has not lost his right.

Mr. CHEVRIER: Supposing the performance is in England and the man happened to be living in Denmark, how would he get his royalty on that.

The CHAIRMAN: How has he ever got it?

Mr. CHEVRIER: But we are trying to improve conditions.

The WITNESS: There is nothing in this Act to prevent the author from suing, but there is the very great danger of this author being eliminated should he dare to go into the courts to protect his rights.

By the Chairman:

Q. Do you mean to say that we shall not enforce just laws in this country on that ground, that a prejudice would arise against any man who seeks to enforce his rights?—A. It is not a question of a court not enforcing the law.

Q. But where does the prejudice exist?

Mr. CHEVRIER: Is this evidence.

The CHAIRMAN: I am cross examining this witness on a statement made.

The WITNESS: The prejudice may exist in this way that if a song were given and that particular work was not in the list and we dared to collect upon it, we would not be able to if the work was not in the list.

The CHAIRMAN: I hope not.

The WITNESS: If the author sought to sue in order to protect his rights the song director would say, "we will cut that man's work out for good," and we have had that threatened to us before. There is a growing prejudice to the individual author if he dares go into court.

The CHAIRMAN: I do not think that we as members of a legislature can deal with exceptional cases of that kind.

The WITNESS: I have finished with the question of filing lists.

Hon. Mr. RINFRET: We have been discussing mostly as to the completness of the list, the names of works, but is not the main objection even greater than the mere filing of the list.

The WITNESS: I am coming to that now. Section 10 (1) (*b*):

It is submitted that this provision would also be a "formality" and apparently a condition precedent to the exercise of the author's exclusive right.

By the Chairman:

Q. An American author is not compelled to file.—A. Not personally, but his agent, the society.

Q. I say the author is not compelled to file, that is all.—A. Therefore, it is in conflict with Article 4 of the Convention, which provides that the enjoyment and exercise of the author's rights shall not be subject to the performance of any formality.

The CHAIRMAN: I know, but that is an argument.

By Hon. Mr. Rinfret:

Q. Is your company a representative of the author.—A. In some cases.

Q. Or the owner of the copyright, or what is the exact position of your company concerning the work.

The CHAIRMAN: We had that all determined yesterday.

The WITNESS: If I may say, Mr. Chairman—

Hon. Mr. RINFRET: I thought we had ten years ago but we did not fix it. I just want to know what the exact position of your company is towards the work. Are you the owner of the copyright or the representatives of the author.

By Mr. Bury:

Q. Are you the agent of the author, or are you yourself the owner of the copyright under assignment from him with all the proprietory rights.—A. The Canadian society is the owner of the rights from the British society.

Mr. IRVINE: You will have to read the evidence of yesterday, gentlemen.

Hon. Mr. RINFRET: I will give the purpose of my question.

Q. Even if you failed to collect as a society the author might collect of his own accord, is that correct.

Mr. ANGLIN: I would say not, sir.

The CHAIRMAN: Pardon me, Mr. Anglin, you are not now giving evidence.

Mr. BURY: Mr. Chairman, is not that a question of law that Mr. Anglin can deal with when he gets up.

Mr. ANGLIN: I just thought so, sir.

The CHAIRMAN: For the benefit of my colleague, the late minister, I understood the evidence to be yesteday that this society was the agent of the author to this extent, that it was authorized through several successive assignments to grant performing rights on behalf of the author for the performance of these musical works in Canada.

Hon. Mr. RINFRET: With all respect to the Chairman, I put the question and I was told evidence was given yesterday, and yet we have the evidence to-day that nobody has properly understood the matter.

The CHAIRMAN: Well, I do not misunderstand what we have in evidence.

Mr. ANGLIN: Mr. Hawkes, no doubt, will clear it up.

By the Chairman:

Q. Are you prepared to file those documents yet, the documents we asked for yesterday.—A. In respect to the British Society.

Q. And the Canadian Society.—A. I am quite prepared to file them, but we have not got them here.

Q. Are they in Canada.—A. We may have to send to London for some of them.

Q. Well, we have asked that they be filed.—A. As far as the composer in England is concerned he assigns, in some cases, a complete assignment, in other cases not a complete assignment, but as they are both members of the Performing Right Society they are bound by the Society's rules in regard to the distribution of the fees collected.

By Mr. Ernst:

Q. You say that in some cases it is a complete assignment.—A. Yes.

Q. And where it is not a complete assignment, what does he assign, the performing right.—A. He may reserve the performing rights which are his own property exclusively, and he is a member of the society. In other words he does not wish the public to participate.

By Mr. Ernst:

Q. In which case he could collect individually?—A. Yes.

Q. But if he parted with the complete assignment it is a different matter?—A. Yes.

By Mr. Bury:

Q. Where the author has reserved to himself the performing rights, what does he assign to the publisher?—A. Trade rights, dramatic rights.

By the Chairman:

Q. In connection with the evidence yesterday I quoted from Mr. Jamieson's evidence:—

> Q. And then we have an English Society—to which the German Society assigns all its interests in the performing rights?
>
> That was my question.
>
> A. Has given the right to license.
>
> Q. Given the right to license, is that all?
>
> A. It is a contract of affiliation between the two societies, by which the British Society is given the right to collect in respect of the rights.
>
> Q. Can you file a copy of one of those agreements—

Now, that is the basis for my statement to my confrere Mr. Rinfret. That is on page 23 of Monday's evidence.

The WITNESS: In view of the fact that it is not the general practice of the Society to grant licences for the performance of separate works, it is unnecessary to file a statement of fees for the performance of each work. Moreover, it is impracticable at the time of publication of a work to fix a performing right fee, which would be appropriate for every class and number of performances.

Q. What objection would you raise to filing your tariffs as you now compile them?—A. No objection whatever. We file that with the Board of Trade in London.

Q. So that your objection is simply one to filing a statement of the charges and royalties in respect to particular works?—A. Yes, sir, it would mean working out one hundred million prices.

Q. That is confined to filing statements of tariffs which you charge in respect of any or all your performing rights. You have no objection to filing them?—A. We have no objection to filing the tariffs that we print now. It is not quite possible for us to give a price for performance of each work where there is one entertainment promoted in a year.

Q. You have no objection to filing a statement of the tariffs, on that basis on which they are now prepared and filed, with this committee?—A. No objection at all.

By Mr. Rinfret:

Q. I understand you are now pointing out the difficulties of doing so?—A. Yes.

Q. And even if it were not as difficult, I understand that you still object to the filing in principle as not being in conformity with the true conception of copyright?—A. Yes, I do, because it is not in conformity, and this is the most practical view of the situation; it is no use to anybody.

The CHAIRMAN: I object to that statement, because you are not the one to decide.

The WITNESS: I can only quote from our experience in England and abroad that we have offered these lists very often to people who come to the office and say that they never availed themselves of them, because it is so much easier for the music user to say, "I will take the lot; it is easier, and it saves a great deal of trouble."

The CHAIRMAN: You are not following the question put by Mr. Rinfret. Mr. Rinfret was dealing with the filing of charges—of a statement of charges or royalties or fees in the form in which you now file them.

The WITNESS: We have no objection to that. I said that.

The CHAIRMAN: He asked you if you objected in principle to the filing of such tariff lists as you have filed before this committee.

The WITNESS: The list of works.

By Mr. Rinfret:

Q. May I put this question: does your company operate in any other country but Canada?—A. In every country in Europe and the United States, we have a contract, and also in some South American States.

Q. Do you have to file any such lists in any other of the Unionist countries in the world?—A. No, sir.

Q. That is the point. What I want to bring out is that it may be difficult to do it, and even if it were easy, it is not in conformity with the copyright spirit of the Unionist countries to exact that from any country, and you will not find that anywhere in any of the Unionist countries.

Mr. BURY: It does seem to me that some members of our committee are specially pleading for one side of this particular question. So far as I am concerned, I want to get the facts. I do not think the members of the committee should act as special pleaders at all, either for or against.

Mr. RINFRET: I think the objection is well taken, but inasmuch as it applies to what I have just said, the question I put to the witness was whether the company is subjected in other Unionist countries to this particular exaction that we want to provide in Canada.

The CHAIRMAN: You received an answer.

Mr. RINFRET: Yes, I received an answer, and a lesson which I will not take up.

The WITNESS: Do I understand that there is a likelihood of Section 10 being modified?

The CHAIRMAN: I cannot tell you. Have you made your case?

The WITNESS: I have already said that we will be prepared to file the tariffs as they exist now.

By Mr. Bury:

Q. May the committee see the form of the tariff as you have it now?—A. Yes, it is printed.

Q. You refer to the lists that you have—publishers lists of works?—A. Yes.

Q. In respect of copyright— —A. List of works.

Q. The publishers' lists of works?—A. There is a list of publisher members, and we also have catalogues.

Q. That is what I am talking about, the catalogue. Those catalogues, I presume, are mixed. You have to hunt through them for the particular works you have an interest in; is that right? You are not filing the catalogue?—A. We could.

Q. But it would contain stuff that you do not want to file?—A. We should want to file everything in these tariffs.

Q. No, these catalogues. Do they exclusively deal with the works you want to file?—A. Yes.

Q. In other words, the catalogue, as far as it goes, contains nothing but the works that are in the two and a half million?—A. Yes.

Q. And if you had all your catalogues you would have catalogues covering the whole two and a half million?—A. Yes. The only point is that it would contain some works in the public domain which are out of copyright.

Q. And which you would not want to file?—A. No.

The CHAIRMAN: Go through and cross a pen through those numbers in the public domain.

The WITNESS: You could cross those out.

By Mr. Bury:

Q. That is what I am getting at. In other words the catalogues would contain works which you would not want to file—which are not in the two and a half million?—A. Yes, they would contain works which the public could perform without licence.

Q. You could cross those out?—A. Yes.

By the Chairman:

Q. Will you proceed? I think you have done with "B", and now you can deal with subsections 2 and 3, whichever you wish?—A. Are there any more questions?

Q. Please make your statement?—A. I wish to read further on this question of prices. I would like to put this in the record: for example, the same fee could not be charged reasonably for a performance at a large theatre and for a performance by one or two musicians in a small provincial hall. If the fee were calculated at a rate appropriate to the former class of establishment, it might well discourage performances at the latter; while if the opposite course were adopted, the fee would be inadequate for performances at the former. Again, reasonably, the same fee could not be fixed for a work which might not be popular and might be performed publicly, once or twice only, as for a successful work performed hundreds of times. Also, it would not be reasonable to charge a fee without regard to the size of the audience, which might be numbered in tens or in thousands, or as in the case of broadcasting where it might be tens of thousands. Although tariffs may be filed, they cannot be adhered to in every case. There are many variations in the form and circumstances of public musical entertainment, which call for adjustments in, and departures from, the regular tariffs. Subject to these considerations, the Society would not object to the voluntary deposit of tariffs with the Copyright Office. As a matter of fact, copies of the Performing Right Society's tariffs, with the variations made therein from time to time, have been furnished to the Board of Trade in London for their information. Furthermore, this section calls for the filing of a statement of fees for the performance of each work. The society controls three million works. The number of these is being added to daily. The work involved by such a requirement would be endless. The same objections, of course, apply in the case of a literary or dramatic work. When

the rights conferred upon copyright owners by the Copyright Act of 1911 were first established, the means of exercising performing rights were considered fully and carefully, and the suggestion that performing right fees might be collected on each individual work was dismissed as wholly impracticable.

Q. Found impracticable by whom?—A. By the people who own the work. It was found that the only reasonable and practicable method would be the formation of a society to operate on lines similar to those of the French Society, which had then been in existence for nearly seventy years. The issue of comprehensive licences, as fees payable annually and covering practically all music subject to a charge for performing rights, is the system which has been followed by the society from its inception, and has been proved by many years of experience to be the most convenient and economical method for all concerned.

Q. I think you have pretty well exhausted that. We understand that statement. Now, have you any objections to subsection 2 and subsection 3?—A. Subsection 2. It is submitted that these provisions would be in contravention of article 11 of the convention.

Q. We will leave that argument out?—A. These provisions are parallel to the ill-fated proposal of the fixed tuppenny fee contained in the Musical Copyright Bill of 1929, and in effect constitute a compulsory licence in respect to the author's exclusive right of performance. It is true that there is already a provision in the Canadian Copyright Act of 1921, Sections 13, 14 and 15, as to compulsory licences in respect to copyright works, but by section 16, subsection 8 it is specifically provided that these sections shall not apply to any work the author of which is a British subject other than a Canadian citizen, or the subject or a citizen of a country which has adhered to the convention.

Q. What are you dealing with now?—A. Compulsory licences.

Q. Is that the Copyright Act of Canada?—A. Yes, 1921. It is submitted that it is not competent for the Canadian government to pass legislation which would conflict with the author's exclusive rights, contrary to the stipulations of the convention, and further, that it would be an act of injustice if works, the subject of copyright, should be made specially the subject of price fixing by the government.

Q. I understand your submission, but that is a legal argument. What would you prefer, that some supervision, regulation of prices, should prevail, or that we should give a year's notice and go out of the copyright convention altogether?—A. That is not it, giving a year's notice.

Q. Is it not a matter of compromise? Let me read to you the unanimous report of the Committee of the House of Commons of England to which you refer?—A. I have read that many times.

Q. I have read it many times too. The 18th paragraph of that unanimous report of a committee of the House of Commons of England which was printed July 3, 1930, says: "Your Committee consider that such a super-monopoly"—that is referring to your company—"can abuse its powers by refusing to grant licensees upon reasonable terms so as to prejudice the trade or industry of persons carrying on business in this country, and to be contrary to the public interest and that it should be open to those persons to obtain relief. . . . "—that is the users of music—"it should be open to those persons who obtain relief in respect of such abuse by appeal to arbitration or to some other tribunal. This should apply only in those cases where the ownership or control of copyright has been transferred to an association."

Now, in the Bill which passed its second reading in England, this provision was contained "(2) to provide a compulsory licence in respect of performing rights, insofar as they have been retained by printing the required notice, with a fixed maximum applicable to the fee which the owner of the performing rights

may demand from the user." That Bill almost unanimously passed the House of Commons on the second reading?—A. I beg to differ, sir; it did not almost unanimously—

Q. Well, it passed the House of Commons?—A. It was torn to pieces afterwards.

Q. I beg your pardon. It passed the second reading, and that principle was approved by the House of Commons, and there is no doubt as to that?—A. I disagree. The Bill was reported without amendment as totally impossible.

Q. I beg your pardon. On the second reading of that Bill it passed the House of Commons and was subsequently referred to a select committee?—A. I must object, because there was considerable objection to it by certain members.

Q. I know. We have the whole debate here; but the unanimous report of the Committee of the House of Commons which subsequently considered the Bill contained this clause 18 which I have read.—A. If I might ask you to read the rest of it.

The CHAIRMAN: I am reading Clause 18 now.

Mr. CHEVRIER: Mr. Chairman, I am not going to object at all; but if that is going down on the notes I say it is not evidence.

The CHAIRMAN: Very well, I will ask the reporter not to take this down.

Discussion followed.

By the Chairman:

Q. Now, in view of that pronouncement unanimously made by a Committee of the House of Commons in England dealing with your case, are you in a position to suggest any compromise whatsoever?—A. First of all, I would like to go further in that report. I think it does not point out exactly who promoted that Bill. That Bill was—

Q. I am not dealing with the promoter?—A. I desire to make this quite clear as to the origin of this Bill. It was promoted by the hotel owners, and one of the chief men on the committee was a big hotel owner who spends £120,000 a year on music and objected to paying us five or six hundred pounds a year for the right to use our product. He was the leading spirit of it—of the evidence given—and it is a very long book, containing grave charges against our society which were met and rebutted fully and completly.

Q. That is a matter of opinion?—A. The Bill was subsequently reported without amendment; in other words, it was so hopeless they could not use it.

Q. It was reported without amendment? I am dealing now with the committee that reported it, and that committee said this. I am asking you now in view of the unanimous report of the committee that heard your evidence for days and weeks in parliament in Great Britain, whether you are prepared now to suggest any compromise whereby this obvious objection to the operations of your performing rights society might be compromised so as to protect the public interest?—A. The British Government have not passed any legislation in connection with that.

Q. That is not an answer to my question?—A. I want to lead up to the point. If they saw fit to pass such legislation or to bring into the next meeting of the Convention some kind of provision that is not for us to dispute.

Q. But we are dealing with it?—A. I beg to respectfully submit, Sir, that Canada should follow that.

Q. That does not appeal to me at all.—A. They did not find that we had sinned in the degree we were supposed to have sinned in the matter of collection of fees.

Q. I am not saying that you have sinned?—A. It is presupposing that we are going to.

Q. It is not presupposing. I am asking you, in view of the unanimous report, whether your society is prepared, inasmuch as the Parliament of Canada is dealing with it now, to make any compromise which would reasonably protect your interests and yet give what the public demand—some protection to the music users of Canada?—A. I do not think, Sir, that the public opinion which desires this protection is the public which is going to be protected.

Q. Parliament must decide that?—A. The public which is going to be protected under such a clause as this are the big music users—the cinema owners, motion picture interests and the radio people, and the hotel people. These are the people who supply us with eighty per cent of our revenue. They are going to benefit under such control, not the small person at all. He is going to be a voice crying in the wilderness. It is the big people who are going to fatten on the author's rights. They are going to make use of such a clause to say, "we think we are paying too much at ten cents a seat; we want to pay five." They are more powerful than we are or any collection of authors could be. They are the people who enforce this control.

Q. I had the Clerk look up this matter on the second reading of this Bill which I have before me, the report of the English House of Commons is, "question put, and agreed to. Bill read the second time." There was no vote against the second reading of the Bill.

The WITNESS: There was a considerable discussion and they agreed it should go to a special committee, because it was a subject that few people knew much about.

By the Chairman:

Q. We have done with that question. Now, tell me is there any reasonable compromise that the Performing Rights Society is prepared to suggest?—A. I have no mandate to make any compromise.

The CHAIRMAN: That answers my question.

By Mr. Bury:

Q. Do you think, Mr. Hawkes, that the public users of music do not require any protection?—A. I think—and I can only speak from experience in England as to that question—the small man who plays music, the small band or village entertainment or such like, has never been treated badly by us. We must, first of all be considered to be reasonable people. We have no desire whatsoever to exploit the small people and raise large sums of money. We have never gone in that way to get money.

Q. Suppose you have not. Is not that rather beside the question. It is only an argument that no practical need has yet arisen for protection; but on the principle, is there any objection to the principle of saying that the music user is entitled to protection?—A. If you could protect the small man and not the large man who is well able to look after himself.

Q. Should not everybody be protected?—A. Why should the big corporations be protected against a group of authors? Are the authors such terrible people that they are going to attack them?

Mr. CHEVRIER: You are simply going to protect the lion against the South African negro.

Mr. IRVINE: Apparently you authors are the negroes.

By Mr. Irvine:

Q. Will you tell me whether you think this Bill as proposed is any advantage over previous legislation, to the authors and publishers?—A. Insofar as the registration section goes, it certainly is of great advantage because the previous Bill made it quite impossible to register a work.

The CHAIRMAN: Insofar as it enlarges the scope and application of our copyright law by definition it must be of very great advantage.

By Mr. Irvine:

Q. Would you say also that this Bill as proposed gives the lions of South Africa a greater power over the goats, was it, than they had before?—A. What do you mean by the lions?

Q. I was just taking up the phrase of my hon. friend opposite. Does this Bill as proposed in your opinion give the large companies that you referred to a moment ago any more power over the authors than they had previously?—A. It gives them every right to go and complain that we are charging too much. Even if it is only five cents they might complain it was too much.

Q. Supposing they did complain, does that mean anything? Would not the Governor in Council be wise enough to know that ten cents was not too great a charge?—A. We hope so.

Mr. CHEVRIER: You are inviting litigation at every step.

By Mr. Bury:

Q. Mr. Hawkes, does it not come right down to this, that your objection to the principle lies in the field that the authorities that will fix the rate will be influenced by the big musical performers, and that that undue influence would sacrifice the owners of the copyright and the owners of performing rights? It really comes down to this, if I understand it—correct me if I am wrong—that it is not the principle you are afraid of, it is the threat that will apply and the influence that can be brought to bear on the authority so that the principle will be wrongly applied?—A. The principle of price fixing is contrary to the convention.

The CHAIRMAN: That is a question of law.

The WITNESS: Yes. I do submit that the group of authors such as are contained in this society are but a very small voice against a whole host of big interests such as exist here and they are powerful, if I may say so, politically.

By Mr. Bury:

Q. That is what I am getting at. In other words, you are afraid that for some reason or other if the authorities set up to fix the rates, they will be unduly influenced by one side against the other?—A. There is always that danger.

Q. Is not that the thing you are afraid of?—A. For one thing; and I submit it is against the convention.

Mr. BURY: That is a question of law.

The CHAIRMAN: We may have to go out of the convention.

Mr. CHEVRIER: That might be a better thing.

By Mr. Ernst:

Q. If you had to accept a tribunal which had some control over price fixing, would you prefer a judicial tribunal to the Governor in Council, the government?—A. I must repeat that I have no mandate to make any compromise on this question. I might offer a personal opinion. It could not be taken as representing my society.

Q. Give me your personal opinion?—A. I do not think I should, in this seat.

The CHAIRMAN: You are the witness.

The WITNESS: I decline to give a personal opinion because it would be attributable to the society. I am not in a position to make any compromise without consulting my friends.

By Mr. Ernst:

Q. You can say that the tribunal suggested might be open to greater consideration on the ground that it was properly constituted to deal with such questions. That is why I asked the question.—A. We do not see why there should be any tribunal that should be set up to judge what we should charge for these things, but as the witness said yesterday, there are other people who should be changed before us. We are but a small body in this world, and it is very hard indeed to get any protection anywhere.

By Mr. Chevrier:

Q. Am I assuming this rightly, that though you may have certain fears, your fears are not so much that the government or Governor in Council might be influenced by these large corporations—because no one has the right to assume that—but that it is to the principle of having a fee settled; that is the way I understand it?—A. That is so. That is absolutely certain.

By Mr. Bury:

Q. You object to that principle?—A. The author by the statute is given certain rights; why should he be limited in the control of the products of his brain.

Q. In other words, Mr. Hawkes, the same principle, even in the relationship of the lion to the negro did not exist if there were two lions?—A. I am always for the principle that the product of the author's brain should be his own.

Q. No one has any objection to the principle. You were talking about the danger of these big performing corporations and hotel men and all of those big Poo-Bahs with all their influence behind them, and their money behind them, and I could only put one inference on that, namely, that you were afraid of their swinging and swaying in some way the fixing of the rates.—A. My objections are two. First of all, the product of the creator's brain should not be fixed in any way, the price should not be fixed in any way whatsoever; it is his to dispose of at the best price he can get for it. Secondly, if such control is imposed upon it, and the government of Canada impose it, then we are certainly afraid that the major interests of the country can do better than we can do.

Mr. CHEVRIER: Let us be frank.

By Mr. Irvine:

Q. Is there not some justification for this restriction from this point of view: you really are people who control your works only by the legislation which has been provided, otherwise you are practically lost. Then, as the representatives of the people have we any right to grant you that power without putting a safeguard there, which you may never violate, but if you do violate it, it would be there to correct it. Maybe a hundred years from now the authors may be masters of the situation, then somebody will curse me for sitting in this committee and not safeguarding the interests of the public.—A. If the occasion do arise that we abuse the right that has been given us by that statement, then I submit it is time to bring it—

Q. I submit the time to do it is now.

By the Chairman:

Q. I should like to draw your attention to this. Your Performing Right Society was represented at the recent convention held at Rome, was it not?—A. Yes.

Q. And you accepted the Rome convention, did you not?—A. Great Britain has not—

Q. Ratification has been postponed, I fancy, awaiting that Canada and other dominions may deal with it. Great Britain signed it.—A. Yes—I am not sure.

Q. You were present or your society which was represented.—A. We had two representatives.

Q. You accepted certain compromises in that convention, did you not?—A. I do not think I can answer that question, sir.

Q. Let me call your attention to this section, Article 11 bis. "(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the communication of their works to the public by radiocommunication." There is no interference with that right in this bill at all?—A. No.

Q. You can withdraw your works from the public any time. (2) "The national legislations of the countries of the Union"—this is the English official translation—" the national legislation of the countries of the Union may regulate the conditions under which the right mentioned in the preceding paragraph shall be exercised, but the effect of those conditions will be strictly limited to the countries which have put them in force. Such conditions shall not in any case prejudice the moral right (droit moral) of the author, nor the right which belongs to the author to obtain an equitable remuneration which shall be fixed, failing agreement by the competent authority."

Section 2 of Article 6 bis. says, "the determination of the conditions under which these rights "—that is the moral rights—" shall be exercised is reserved for the national legislations of the countries of the Union. The means of redress for safeguarding these rights shall be regulated by the legislation of the country where protection is claimed."

Now, under these two sections is not the principle recognized that the national legislations may enforce certain decrees of regulation with respect to broadcasting?—A. I think that is a legal argument and I should prefer that Mr. Anglin deal with it.

By Mr. Bury:

Q. May I just ask one question. I have not the knowledge of this matter that the other members of the committee have. The restrictions which are proposed in section 2 have only to do with performing rights.—A. Yes.

Q. They have not to do with the owner of the copyright? They do not purport to lay down charges or regulate charges which the Performing Right Societies are to charge to performers?

Mr. CHEVRIER: These performing rights are musical rights.—A. Petits droits, small rights.

Q. Musical rights?—A. Only musical.

By Mr. Bury:

Q. As far as they are concerned?—A. As far as our country is concerned.

The CHAIRMAN: I should like to call your attention to another paragraph, which is very important to your society. It has been represented as being very important by the French society, by some other foreign societies, namely that which is contained in section 7 of this bill, subsection 4: "(4) The author or other owner of any copyright or any person or persons deriving any right, title or interest by assignment or grant in writing from any author or other owner as aforesaid, may each, separately for himself, in his own name as party to a suit, action or proceeding, protect and enforce such rights as he may hold, and to the extent of his right, title and interest, is entitled to the remedies provided by this Act."

That gives you, as assignee of performing rights, the right in our courts to enforce your performing rights, without joining the author and irrespective of the author being a party to the suit. That is very important to your society,

is it not?—A. Well, any assignee could—I am not a lawyer, sir, I would rather leave that to Mr. Anglin. I am sure any assignee could sue. In respect to copyright an assignee could—

Q. In the administration of your society has not a serious question been raised as to whether a separate assignment of performing rights could be enforced, without joining the authors?—A. In the British courts?

Q. Yes.—A. I do not think we have had difficulty there. We did have one case, I think, where there was a—I do not think that comes in the—

Q. All I can say is it was suggested to me that this clause be inserted, and it was inserted, if I remember correctly at the request of those who wished to enforce separate and distinct rights of that nature.

Mr. CHEVRIER: If the United States should come into the convention, then this will be very helpful.

Mr. RINFRET: In connection with section 7, perhaps I may put this question to the Chairman rather than to the witness, if I am in order. Do I understand that if an author has sold his copyright, assigned his copyright to a company, and that company has not complied with this bill by filing their list of certain works including that particular one, the author may still claim his right, under section 7?

The CHAIRMAN: If he has assigned it to a company?

Mr. RINFRET: He has assigned it to a company, but the company has not properly filed it.

Mr. CHEVRIER: He is out of court.

Mr. BURY: Suppose there is an assignment made to the owner of a company and the assignment is not registered.

Mr. CHEVRIER: Not filed.

Mr. BURY: It is not filed.

Mr. RINFRET: Under section 10.

Mr. BURY: Yes.

Mr. RINFRET: Would the Government or the Department recognize the claim of the author?

The CHAIRMAN: The Department has nothing to do with it. The plaintiff has to prove his title and if he does not prove his title, although large assumptions under our act may be made in his favour, the courts can decide whether he has any rights or not.

Mr. RINFRET: I should like to know the meaning of section 7 which has been alluded to.

Mr. CHEVRIER: I think I get my hon. friend's point and I should like to clear it up. Supposing that the author has assigned to the Performing Right Society his performing rights and for some reason or other they do not file a complete list of all the things they have, they leave out two or three of the titles which he has assigned to them. So far as the performing rights are concerned they do not file them. Is the author unable to come to the courts and sue? He has already divested himself in the hands of these people who have not registered them.

The CHAIRMAN: You might say if you were the judge, he had no further interest in them.

By Mr. Chevrier:

Q. What I want to say is this: if these performing right people register all then he is all right, because he can join them in, but if they have not registered it he is out of court.

The CHAIRMAN: There is no registration necessary in this—

Mr. CHEVRIER: Oh yes, Mr. Chairman. He has divested himself in their hands and they fail to protect him.

The CHAIRMAN: I refrain from discussing it now, but I am instructed, I may be wrong, that the preparation of this bill proceeded on the basis—

Mr. CHEVRIER: I am satisfied with this, Mr. Chairman.

The CHAIRMAN: That the agreement which the Performing Right Society of England makes with authors and the agreement which the Performing Right Society of Canada makes with authors, does not involve an assignment of the author's rights to the society.

Mr. CHEVRIER: That is perfectly true.

The CHAIRMAN: It simply grants unto the society the right of licensing and collecting compensation for licence issued. That could only be disclosed when the documents, which they have agreed to file, are filed.

Mr. CHEVRIER: We will let that go until we get into the discussion.

The CHAIRMAN: Will you proceed now, Mr. Hawkes. Have you anything further to say?—A. Yes. The last point you made, I must point out the Performing Right Society have the assignee of the author's rights—

Q. Are assignees of the rights?—A. Yes.

Q. That will be determined by the instruments.

By Mr. Chevrier:

Q. We will have to see them. Either you get the whole rights or just the performing rights.—A. Performing rights only.

Q. The documents will show, anyway.

The CHAIRMAN: My misapprehension, if it is a misapprehension, is due to the statement in part or to my appreciation in part of the statement made to me by Mr. Jamieson in the hearings which we had before the preparation of this bill, and to the distinct statement which Mr. Jamieson made in his evidence.

Mr. JAMIESON: May I say, sir, my statement did not touch upon the step between the British members and the British society. I referred particularly to the document between the British society and the Canadian society, which gave us the exclusive right to license; but there are many assignments, I understand, from Mr. Hawkes, from the members of the British Society to the British Society and the legal ownership is with the British society and the authors, and they are not in a position to take action themselves.

The CHAIRMAN: You have just said to me what you said before, that so far as the Canadian Society is concerned you have the right to license and to receive compensation for such licenses in Canada. That is what you have from the British Society.

The WITNESS: Yes.

Mr. JAMIESON: The point is—

The CHAIRMAN: Is that so, or not?

Mr. JAMIESON: Yes.

Q. That is all. Have you anything further to say, Mr. Hawkes?—A. I wish to read further. Both this proposal—

Mr. CHEVRIER: What is the clause?—A. Section 10 (2) and (3). Both this proposal and that contained in section 11 below mentioned, would take away entirely the author's right to state the terms on which his property may be used, without any right of appeal. This would constitute a gross violation of the author's freedom of contract and an interference with the "enjoyment and the exercise of his rights under the Convention.

By the Chairman:

Q. Would that interfere with the author's reserving his work from public performance; would that interfere with the author who still retained vested interests in his work from prosecuting infringers in the criminal courts?—A. Under section 11 you divest the author of his right entirely.

Q. What do you mean by that?—A. Because you grant free performances to certain people.

Q. Under section 11?—A. Yes.

Q. I do not understand that at all.

Mr. CHEVRIER: Section 11 is churches, and so on.—A. And others. There are too many religious—there are other things besides religious performances in that section.

Q. You are dealing with 11?—A. Yes, I am referring to 11, because I say 11 divests the author of his right altogether.

The CHAIRMAN: I thought you were dealing with 10.

Mr. CHEVRIER: He is dealing with 11.

The CHAIRMAN: Let us deal with 11, then.—A. It is submitted that subsection 2 enables the Governor in Council to fix the price of the licence of the class of copyright owners covered by subsection 1. "Each and every association, society or company which carries on in Canada, either as principal or agent, the business of acquiring, assigning, granting or licencing copyrights or of any separate interest therein, or which deals with the issue or grant of licences for the performance in Canada of any literary, dramatic, musical or artistic work in which copyright subsists under the provisions of the Copyright Act as amended by this Act."

Q. Now you are dealing with section 10?—A. 10. This particular class of owners, therefore, must either withhold their licence altogether, or grant a licence upon them. And since the liberty to authorize other persons to exercise the copyright owner's rights or, in other words, to grant licences—is one of the sole rights expressly included in Copyright under the Canadian Copyright Act, —it is submitted that this necessarily involves unfettered liberty to the owner of the copyright to make his own terms. It is not he, but someone else who authorizes the performance upon terms to which he has never agreed.

Q. That is due to your interpretation; whether yours is right or mine is right is a matter for consideration. But in the case in which the author has not vested in the Canadian copyright society ownership of performing rights, your remarks do not apply, it seems to me.—A. The section, in fact, assimilates the right of public performance,—when held by a particular class of persons— to the right of mechanical reproduction, in respect of which any licence, after the first, is compulsory, and must be at a statutory rate. But it is to be observed that whereas the Convention makes provision for such an invasion of the composer's sole rights,—in the case of mechanical contrivances—it makes no such provision in the case of the right of public performance. It is submitted that section 10 of the Bill contravenes the Berlin convention, whether one regards its operation as imposing a formality upon the exercice of, or as a curtailment of the sole right.

By the Chairman:

Q. That is legal argument and furthermore, in dealing with the new accession to the Rome convention it is left to the Canadian Government to accept that.

Now would you deal with 11?—A. Yes sir.

Mr. BURY: Before you come to 11, Mr. Chairman, did I gather from you there was something in this amendment that made it compulsory for the first performance to grant licence?—A. Yes.

Q. Where is that?—A. It is in the—

The CHAIRMAN: He is dealing with the original; it is not involved in this bill at all.—A. Section 11. Whilst a collecting society would no doubt extend sympathetic treatment to performances given for such purposes as are indicated in this section, it is submitted that it would be a violation of the convention to deprive, by statutory enactment, the author's right to authorize or forbid the performance of his work in such circumstances, and the observations made above apply equally to this section.

At the same time, free use of the society's repertoire is granted for charitable entertainments, provided that no payment is made to the performers. The society does not seek payment of fees in respect to performances in churches or other places of worship in conjunction with the religious services or for competitive musical festivals.

Q. Then, is there any objection taken?—A. I think it is a very difficult line to draw, anyway. It opens the gate to all sorts of abuse, a thing like that. There is no good shutting our eyes to it. We have had experience of such abuses in England. People say for charitable purposes we want to do this, that, and the other thing, and when we ask for conditions and details of the charitable purposes or charitable performances, we find all sorts of people are being paid, and the performing rights are supposed to give the author's property for nothing.

Q. That is the only objection?—A. We never thought of churches.

Q. That is the only objection to 11?—A. We object—there should be no statutory enactment which will deprive the author of his rights of protection. We would lay down as our—

Q. You are assuming that, because you, who control the work of 30,000 authors, 2½ to 3 million works in all may be regulated, that is a regulation of the individual author; you are assuming that?—A. Depriving him of something.

Q. Perhaps it is. That is what you are assuming.—A. You are taking it away from him.

Q. You are assuming that is a regulation of the individual author?—A. It is removing the right that he has.

Q. All I can say is, in my mind I see a clear distinction.—A. Furthermore, if I may say so, the majority of music played in churches is not controlled by this organization at all.

By Mr. Bury:

Q. If that is so, what harm is done?—A. Church music, no harm in respect to collecting operating rates from the churches. In some cases—

Q. Mr. Rinfret made a suggestion the other day which struck me as a very relevant one. In regard to church music composed during the last fifty years, at least fifty years from the death of the author, or joined author—

Mr. CHEVRIER: Of course, Mr. Chairman, this Performing Right Society is not dealing with church music, but the author would be highly concerned himself.

The CHAIRMAN: I understand now that the list of authors and publishers which had been filed includes publishers who do publish modern music.—A. Yes, mostly Novello, a household name, if I might put it this way, in church music in particular.

Q. That does not apply to the French and German and Italian societies?—A. We object to any suggestion that you should deprive an author by statutory enactment, you take his rights automatically. His works will be free for performances by charitable and fraternal organizations. That can cover a multitude of abuses, surely.

Q. It may require a more careful definition. Let me return to the point Mr. Irvine made a few moments ago. If you have rights in this country simply by reason of statute, and if rights are conferred upon you by statute, it is, so far as the parliament of this country is concerned within the competence of parliament to make regulations with regard to the exercise of your statutory rights.

Mr. CHEVRIER: I appreciate fully, Mr. Chairman, what you say, but I do not think I am quite prepared to give any opinion at the moment. I appreciate fully the distinction or idea. Your idea as I get it, would be to have some regulation, following the idea of Mr. Irvine, that if parliament has the right to grant a statutory right of copyright it also has the right to grant certain restrictions. But as I see it here there ought to be some distinction made with the author himself. There is nothing contained in the Copyright Act nor in this act that would prevent the performance of any musical work in which copyright subsisted. Something ought to be made clear that it would not apply to the author himself. It may be well to regulate certain Performing Right Societies, but surely it is too wide.

The CHAIRMAN: I quite agree with you.

Mr. RINFRET: Could it not go in as a subsection to section 10? That may be another way of doing it.

The CHAIRMAN: Quite so. That is for the committee.

The WITNESS: I would like to say that our attitude has been that if we do not make any charge, and if there is some charge made by others at the same time for services—

By the Chairman:

Q. What you would like to have inserted, supposing this provision should stand, is this: the insertion of the word "gratuitous," or something like "nothing contained in the copyright nor in this act shall be construed to prohibit the gratuitous performance of any musical work," you would like some such wording?—A. If we are giving it gratuitously, provided the other people who are giving the entertainment are also giving it gratuitously, then we do not want to charge a price.

By Mr. Bury:

Q. Your idea is that where the whole performance is gratuitous you yourselves do not object to being put on the same level with them and giving it gratuitously, but you do object to giving it gratuitously if others are being paid?—A. Yes, if others are being paid.

The WITNESS: Do I understand, sir, that it is suggested that an alteration be made in clause 11?

The CHAIRMAN: We are simply trying to get your view.

The WITNESS: The question of the word "benevolence" that has a very, very wide term, I think you will agree.

Mr. BURY: So has the word "charity."

The CHAIRMAN: I may say that this clause was adapted from a clause in the Bill recently before Congress in the United States, which passed the Lower House and passed all readings except the third in the Upper House, the third reading having been delayed owing to the sudden closure of Congress, and I was advised that the law officers of the United States that the clause in the proposed Bill of the United States Congress was not deemed an infringement of the convention. But that is a mere opinion.

The WITNESS: The only question in connection with the tariff, or things like that—

The CHAIRMAN: They will be filed for our consideration. Do any of the members of the committee wish to ask any further questions.

Mr. IRVINE: Mr. Jamieson, do you wish to make a further statement.

Mr. JAMIESON: Appropos of what Mr. Hawkes has been saying, sir, I just wanted to point out that any music user, any concern using our works, might come within this term of charitable or benevolent organization, and it is altogether too broad.

Mr. THOMSON: If that finishes that case I suggest that Colonel Cooper be called.

Mr. RICE: I have to leave for New York right after lunch.

CHAIRMAN: Very well, we will hear you now.

Witness Retired.

GITZ RICE, called and sworn.

By the Chairman:

Q. Will you please give your name, profession and address.—A. I am Lieutenant Gitz Rice of the 1st Canadian Contingent, a resident of the city of Montreal, a Canadian composer. I took to the profession of song writing before the war, in Canada, and furthered it in France and carried on back here after the war.

Q. Well, we are very glad to hear you.—A. Since I started my profession of song writing, I have been very fortunate in writing some of the World War's greatest songs. I have yet to collect the first cent from my own country, Canada, for them. I am here as Exhibit A, victim No. 1. I understand, sir, that you are to put some things in this Bill. There has been a lot of squabbling about churches, and a lot of things that I have laughed at many times. The composer always gets the worst of it no matter where you go. A composer is at liberty, under this Bill, to sue. I instituted the greatest suit against the Columbia Gramaphone Company to collect from them royalties on "Dear Old Pal of Mine." At that same time the Victor Berliner Company of Montreal published 250,000 records of McCormick singing "Dear Old Pal Of Mine," and never paid me a cent. The Victor Company in the United States as a matter of fact, refused to pay me, awaiting a decision against me or for me in my case against the Columbia Gramaphone Company. I won the first case. They appealed because they were aided by other gramaphone companies and their legal counsel. They took me to the second court and I lost because their additional aid helped to defeat me as an individual. I still was encouraged by the Society of American Composers, Authors and Publishers, that they would back me up whether I was a Canadian or not, because I was in that country at that time. We took it to the Supreme Court, and after a lapse of many months I finally received an award of $11,000, and after the costs of all the additional lawyers were paid I received nothing. I lost, sir, more than 6 months' time. In fact, if I have to sue all that you wish me to collect in Canada I will be up here for the rest of the days of my life. I do not like this individual suit.

The CHAIRMAN: It might be a good thing to retain you in Canada. We always like to retain our Canadians.

The WITNESS: I will give you a little example of why I do not like it: An infringement was made on a writing of mine in the city of New York by a big motion picture concern. I went to a legal man, gave him a deposit, and after a few weeks I was told "don't you think you had better lay off this corporation if you expect to ever do any business with them." I laid off. I have no enmity

against anybody, but I would like to have the chance, as a Canadian, to say how much shall be paid me for my work. I have never had it up to date, and the only way that I have ever been able to get anything out of it was to associate myself with the American Society of Composers, Authors and Publishers. The only moneys I have ever derived have been from that Society. It is functioning beautifully and we fellows, as composers, have nothing to say against our Board of Directors for the way in which they have handled our affairs. We have given them a true vote of competence, and the scheme works beautifully. As to the big corporations they are very under-charged. But we are feeling our way. We are getting somewhere, we are trying to get the author something out of it. Things are so bad that the author does not get paid enough. I have not been depending on my writings for the last fifteen years. I have had to take to the stage to perform an act to make things meet.

By the Chairman:

Q. Do you think that you could not have confidence in the Governor in Council of Canada, after listening to an appeal such as you have made—A. I was here before, Sir, ten years ago—

Q. —prescribing, under this section, fees, charges or royalties which would be a fair compensation for your efforts.—A. I do not think in any other walk of life a man has to go to his own government to be told what price he shall sell the product of his brain for. Why does a composer have to.

Mr. ERNST: The answer would be why doesn't the lawyer have to.

The WITNESS: Why does'nt anybody else in any walk of life? We have never got anything, Sir.

Mr. IRVINE: There is only one justification, as far as I can see, and that is your own efforts here.

The WITNESS: I have never got anything, Sir.

Mr. IRVINE: We are trying to frame the law so that you will be able to get something.

The WITNESS: Why take away from me my privilege. As I say, I have never got anything out of it. Why allow those people to say to me "you will take this or nothing."

The CHAIRMAN: I do not think that is the object of the Bill.

Mr. CHEVRIER: That may not be the object but it will undoubtedly be the effect.

The WITNESS: Certainly, Sir. You divest me of my authority as a Canadian composer.

By Mr. Chevrier:

Q. If you were to turn it over to a Performing Right Society— —A. I cannot fight my case individually.

By Mr. Bury:

Q. The point is this, that the charges that are fixed by the Governor in Council are not the charges that you are to make to the Performing Right Society.—A. I can answer that, Sir. Any individual work I write, at the time of writing it I do not know whether it is going to be a hit or not. All of a sudden "Dear Old Pal Of Mine," Sir, was performed, and I had no copyright—

The CHAIRMAN: Was it copyrighted?

The WITNESSS: No, Sir. Over in the United States I performed it and John McCormick sang it. I did not know it was going to be a hit. I would never have set it up for registration in Canada.

By the Chairman:

Q. If in the United States the United States had been a party to it then copyright would have subsisted from the time that you wrote it.—A. All right, and supposing, Sir, I sell a manuscript at a fixed price and over night it becomes a hit.

By Mr. Bury:

Q. Who do you sell it to?—A. To the big companies.

Q. To the Performing Right Society.—A. No, no. I do not sell to the Performing Right Society. We meet four times a year and we are classified. If I have a hit to-day I am in A. If only yesterday then I am in B, if the day before yesterday then I am in C, and if it is old then D. You understand, it is the classification of our society.

The CHAIRMAN: We have had evidence in the records and in the documents to be submitted of the organization and methods of the American Society of Authors and Publishers.

The WITNESS: And the Canadian Society which is going to function, is going to represent me here. I cannot be up here to defend myself against these big corporations, and I am investing in them the authority to give it to the churches but charge the big fellows, if that is what you are looking for.

By Mr. Irvine:

Q. Why give it to the churches.—A. I don't know. They always expect it.

Q. I would charge them.—A. I am a Nova Scotian, sir, and we used to have church concerts down there and we always got everything free. I was born in New Glasgow. My father was a church choir leader there. I send down to the good old choir in Nova Scotia every manuscript, everything I write.

Mr. CHEVRIER: There is something I would like to find out. There may be some merit, in fact there may be considerable merit, in the regulating of or doing something with Performing Right Societies, but my greatest objection to it is just what Mr. Rice has stated, and if I can find some solution I will be grateful. He writes a song, and he is unable to say whether it is going to be a hit or not. He turns it over to a Performing Right Society and then the Society complies with the exigencies of the Canadian law. They file a list, a complete or selected list in which his song is. They place on the end of that a tariff, a fee for which it may be used. I do not know whether it would be ten cents, fifty cents, a dollar or five dollars. The song is either one of two things, a hit or no hit. How is the Performing Right Society to know if it is going to be a hit or not.

The CHAIRMAN: So far as the Performing Right Society is concerned, when they submit their tariff it includes his song with 25,000 other songs.

Mr. CHEVRIER: That is the trouble, Mr. Chairman.

The WITNESS: It may not include it, sir, because in France in 1915 I created "Madamoiselle From Armentieres" you know—"Hinky Pinky Parley Voo." It swept the country. I was at war and doing the best I could with the battery. I could never copyright, you can understand that. And it has swept the country since, and I have yet to earn the first penny from that song. I did not know when I wrote it that it was going to be a hit.

The CHAIRMAN: Under our law you would not be compelled to make application for registration for copyright. Copyright will subsist from the time that you make the work.

Mr. CHEVRIER: Yes, but he gets nothing for it.

The CHAIRMAN: What I am dealing with is this: I appreciate your distinction clearly, but the tariff as filed by the Canadian Performing Right Society makes no such distinction.

Mr. CHEVRIER: As I say, they do not know whether it is going to be a hit or not.

The CHAIRMAN: We understand the point and it is reserved for discussion.

The WITNESS: May I say, sir, that I sold a manuscript one time for $25 to a big corporation for a musical act. It was supposed then to be an incidental piece of music to that act. As I say, I sold it for $25 thinking that was all it was worth. I saw the same act the following year, sir, and it was the theme song of that act. If I had known that my song was going to be the theme song of the act I certainly would not have sold it for $25.

Mr. CHEVRIER: That is the trouble I am up against.

Mr. BURY: Is not that a question of hit or miss.

Mr. CHEVRIER: No, it is a question of fixing the price.

Mr. BURY: That has nothing to do with the fees that are charged. A man buys a piece of music, and he sells it for what he thinks is the best price he can get. He sells a good thing, far better than he thought it was.

The WITNESS: We never sell it.

By Mr. Irvine:

Q. Supposing a nominal fee is placed on a song, when you write it you do not know what is going to happen to it. Supposing you alter it? It is a popular thing. I would like to know if he can alter his fee.

The CHAIRMAN: Certainly.

Mr. BURY: The Performing Right People can put a minimum fee on a song and if they find it is going over big, like Dear Old Pal of Mine, they can immediately re-register.

The WITNESS: Can they have a sliding scale, and increase the fee.

Mr. CHEVRIER: In the meantime, supposing that on that fee alone the Performing Right Company has given a licence for a year, I mean at that nominal fee, not knowing whether it is going to be a success or not, and then six months later it turns out to be a success, then they still have the right to use it at that nominal fee for six months longer.

The CHAIRMAN: No, no.

Mr. CHEVRIER: That is what the Act says.

The CHAIRMAN: I think not.

Mr. BURY: That could be taken into consideration.

The WITNESS: If I still own it I want to sell it for additional money.

The CHAIRMAN: The Bill says "shall from time to time file with the Minister." That is, they can revise their fees.

Mr. CHEVRIER: They can file from time to time new ones.

The CHAIRMAN: I have no objection to them raising their fees or changing their fees at all.

The WITNESS: Have you any objection to my retaining and owning my own copyright.

The CHAIRMAN: Not in the slightest.

The WITNESS: And sell it for what I can get for it.

The CHAIRMAN: Not in the slightest.

The WITNESS: All right then what is the argument about the government fixing a price.

Hon. Mr. RINFRET: We seem to take it for granted that this Bill is going to be adopted word for word. We say, the Bill says this and says that, but

it will say whatever we decide it must say. Evidence has been taken to help us to change the Bill.

The CHAIRMAN: We are listening to the evidence in order that we may make whatever modifications we think are necessary.

The WITNESS: The only way a man is going to get anything out of his work is by associating himself with a Canadian Performing Right Society, or any name that it is going to be called, which is affiliated with other Performing Right Societies, in England, the United States and other countries.

By the Chairman:

Q. That is a pretty complete statement of your case.—A. Yes. But every time you split hairs with me it is the society.

By Mr. Bury:

Q. The point is this, that you object to this clause which gives the Governor General to fix the fees of the Performing Right Societies; you object to that because those are the only fees you get.—A. Absolutely, I object to that. The society is co-operative, co-operative ownership.

By Hon. Mr. Rinfret:

Q. Is it your experience that an author trying to claim his own performing rights is perfectly helpless?—A. Helpless.

Q. And the only way he can protect his right is to enter the society?—A. Absolutely.

Q. And look for their co-operation?—A. Absolutely. Individually we are helpless, and the only solution is the affiliation with the Performing Right Society. We can engage good counsel whereas individually we cannot, and my interests are protected in all parts of the world. The Society is taking care of me.

The CHAIRMAN: It seems to me you have stated your case very well indeed.

The WITNESS: I thank you very much indeed for this opportunity. I hope I will be up again. I was up eight years ago, and I was promised a lot of things, but I never got a thing.

Witness retired.

The committee adjourned at 12.50 p.m., to resume at 4 p.m.

AFTERNOON SITTING

The CHAIRMAN: Gentlemen, there is a quorum so we will now proceed.

JOHN A. COOPER, called and sworn.

By the Chairman:

Q. Please give us your name, residence and occupation.—A. I am president of the Motion Picture Distributors and Exhibitors Association of Canada. My address is 53 Binscarth Road, Toronto. I am also, to-day, sir, if I may be allowed, representing the Province of Quebec Theatre Owners' Association, which comprises most of the theatre owners of the Province of Quebec, the independent theatre owners of the Province of Ontario, the Motion Picture Association of the Province of Manitoba, and the Saskatchewan Independent Theatre Owners, and a certain number of theatre owners in the other provinces who are not formed into an association. I would like to point out, sir, if I may, that these combined people whom I represent have nearly one hundred million dollars invested in this country, and that they employ somewhere around fifteen thousand people, so that I have to be careful in representing such large interests. Will it be necessary to say anything about the Motion Picture Association—the main Association that I represent?

Q. We will leave that to your discretion?—A. I will be very glad to say what this Association represents. It represents ten of twelve distributors of motion pictures in Canada, including the Famous Lasky Film Service, Regal Films Limited, Fox Films Corporation, Canadian Universal Film Company, Canadian Educational Films, United Artists Association, Mary Pickford's Company, Warner Brothers Pictures, the First National, and Columbia Pictures. These companies distribute practically all the pictures that are distributed in Canada, whether those pictures are made in England, Germany, France or the United States. Our association is not an association for profit, but merely an association such as the Canadian Manufacturers Association, to take care of matters of general interest to all these companies, and these companies are, in fact, highly organized competitors for the business of distributing motion pictures to the thousand theatres from coast to coast. If I might add these ten companies, inasmuch as they handle pictures, do contribute directly or indirectly to the support of composers and authors. In article 13 of the Berne Convention, the first Clause reads:—

> The authors of musical works shall have the exclusive right of authorizing (1) the adaptation of those works to instruments which can reproduce them mechanically.

The motion picture producers come under that first clause. The second clause says, "the public performance of the said works by means of these instruments." We do not come under that. We come under the first clause. And in Elstree, when the British manufacture a film—the British producer is making a picture—he has to pay to the music publisher—I do not know what the name of the association is, perhaps Mr. Hawkes could tell us, but it does not matter—he has to pay the music publishers of England and through them to the composers, I presume, for recording rights. I do not know just what the licence fee in England is, but I do know that the arrangement which was concluded last July about the time I was in England was that these recording rights—there is a certain fee paid for them in England if the picture is confined to English cinemas.

If a picture is sent out to Canada—they paid four or five pounds more. I would not be too exact as to the amount, but this gives the principle. If it is sent to Australia two or three pounds for Australian recording—

Q. I would like to mention the fact that the law officers of the Board of Trade in England have given a legal opinion that under the existing law of England performance includes performance by mechanical means as much as broadcasting, gramaphone records and talking films. So I presume that in Great Britain you come under the present Copyright Act there?—A. We do not come under the public performers as I understand it. These producers whom we represent do not come under that. It is merely recording rights that they are speaking of, not performing rights. In Hollywood the motion picture producers there pay an annual licence to the music publishers of the United States. That licence was fixed originally at about one hundred thousand dollars a year per company. I think it is somewhere about $150,000 now. I am mentioning this, Sir, to show that the motion picture companies do pay for the music which they record and on their films or on the discs which go with the films, and in that way they do contribute to the composers of music all over the world. Then when these pictures are distributed in the United States or Great Britain, or come into Canada, they are distributed to the theatres; the theatres are given licences to show them, and it has been the custom in all these countries to leave the question of paying performing rights to the theatre owners. The motion picture people have now taken care of the performing rights, and that is why the theatre owners are chiefly concerned with the performing rights, and why we are not. But we do pay, if I may say so on behalf of the motion pictures—we do pay our share, a fair share and all that is demanded of us for the mere recording of the music, and that amounts to a very considerable sum during the year. I would imagine that the authors and composers would get considerably over a million dollars in the United States for that mere recording right. Where the money goes I am not able to say. I do not know how it is distributed, but I do know that the motion picture industry pays it. In England I would imagine they would pay several hundred thousand dollars a year for the rights over there, although they have not produced as many pictures, of course, as the people in the United States.

By Mr. Chevrier:

Q. You are only speaking from hearsay; you don't know?—A. Don't know what?

Q. Just what they pay?—A. I cannot give you exact amounts. I have the fees in my office, but I did not think it was necessary to give them. But I do know they pay. We have heard that from an association which is much the same as ours and sends us their information.

By Mr. Ernst:

Q. Have you also the Hollywood figures in your office?—A. No. If you want them I can get them.

Q. I do not say they will serve any benefit so long as we know they are approximately correct?—A. I think I can assure you of that. Mr. Hawkes might be able to give you those figures better than I can. Just before coming to the Bill itself I would like to make one statement if I can. You mentioned this morning that when you were in England you had received a deputation from the British Performing Rights Society.

The CHAIRMAN: There was a deputation that waited upon me. I understood that they were represented.

The WITNESS: You also mentioned that you had consulted Mr. Jamieson before the Bill was framed.

The CHAIRMAN: I do not like that statement. I did not consult Mr. Jamieson. Notice was sent out that we were preparing a Bill, and numerous delegations appeared at the Department of State to make representations.

The WITNESS: The reason I make this statement, sir, it is not important—

The CHAIRMAN: Im my memory is correct, Mr. Cooper was present on one occasion.

The WITNESS: I have been sort of noised about—I do not accuse anybody of saying it—but this Bill, it was suggested, is partly due to my inspiration.

The CHAIRMAN: I can give you a clear record in regard to that; you certainly inspired no part of it as far as I know.

The WITNESS: Thank you, sir. I did not see the Bill until after it was in print, and we had no correspondence.

By Mr. Chevrier:

Q. Did anybody on your behalf?—A. Nobody on my behalf or on behalf of the motion picture interests of Canada, so far as I know.

Q. Nobody on behalf of any corporation with which you are associated made any representations to any officer of the government with reference to this Bill? —A. So far as I know, sir, that is correct.

The CHAIRMAN: They were so numerous that I thought nearly everybody was represented. I do not pretend to say—

The WITNESS: It is not important.

The CHAIRMAN: —representations were made by nearly everybody.

Mr. RINFRET: In my experience, representations about copyright come to the Secretary of State before, during, and after the printing of a Bill.

The CHAIRMAN: I certainly found a large number of documents there on August 7th last.

The WITNESS: There were none from our association or any other association with which I am connected as far as I know.

By Mr. Irvine:

Q. Are you ready to take up the clauses?—A. Yes.

Q. May I ask before you do that if you know of any case in which you think the motion picture theatres, in your opinion, have been overcharged by the Performing Rights Society of this country or the United States?—A. If Mr. Irvine would leave that question, I intended to deal with it later on.

Q. If it suits you better we will leave it until later?—A. I have some notes on this subject with regard to the Bill, Sir. There are a few minor comments which we would like to make. I may say that personally, speaking purely personally, I think the Bill comes nearer being a solution to some of the problems which we have to face than any previous Bill; and while I am on the subject of the various sections I will say that in a way it seems to us an attempt to clear up the situation which is worthy of some commendation. I will start with section 2.

By Mr. Bury:

Q. Of the amending Bill?—A. Of the amending Bill, Clause V. "'Work' shall include the title thereof when such title has other than a general, geographical descriptive or commonplace meaning." We have had a great deal of difficulty with titles in the motion picture business and I would like to suggest that that might be rather awkward to the motion picture business to live up to that title.

By Mr. Chevrier:

Q. In what way?—A. Well, I would like to suggest the addition of the words—and they will probably explain my meaning—instead of using geographical, descriptive or commonplace meaning—I would suggest the words "when such title is original or distinctive".

Q. Who is going to be the judge of that?—A. That is just a suggestion, Sir. I am not going to press it. If it is of any value to the committee.

By Mr. Rinfret:

Q. What is the real difference between that and the text of the amending Bill? It seems that in both places there is room for discussion?—A. We think that Clause V as at present is a little too general. We have a great deal of trouble about titles.

Q. That may be, but I fail to see how your proposed wording will make it more precise?—A. I am acting on the instructions of our solicitors.

Mr. BURY: What are the words "when such title is original or distinctive? If any person thinks that is not justifiable, he will say so. I suppose Mr. Jamieson, when he comes to give his argument, could be asked that question as to why he thinks that is better.

By Mr. Ernst:

Q. Do you think it is advisable to copyright titles at all?—A. No. The general opinion of the motion picture industry is that it is very dangerous to copyright titles.

Q. I have reason to believe the authors think it would be a nuisance to them. Unwillingly they will be infringing titles they do not know anything about?—A. If that is their opinion, I agree.

Mr. CHEVRIER: I would not subscribe to an opinion like that in view of the information and the concrete cases that I have had through these nineteen years. That is vital.

By Mr. Bury:

Q. Don't you think that if there is an objection to that we should have first hand evidence on the objection?—A. Absolutely, Sir. We will arrange to give you some evidence.

Q. I am not suggesting that you should, but I am saying that if you are going to consider the objection we should have that?—A. Very well, Sir.

By Mr. Ernst:

Q. While you are on that I would like to ask another question which is not clear to me. How do you propose to find out what titles are coprighted?

Mr. CHEVRIER: The whole work is copyrighted, the title and everything. That is vital. Some of the authors will give evidence as to the value of the title to their work, and as to, for instance, mutilations. There are concrete cases where a work has been taken and just the title kept. I know a good number of them. I cannot give evidence, but I personally know of a large number of cases where the real work was taken out and the title alone kept, and the play or novel was absolutely different from what it was under the title.

Mr. BURY: What about the case of Bernard Shaw's "Arms and the Man"? His copyright was taken for the title. You cannot take copyright for a title. That is old as Virgil.

Mr. CHEVRIER: Let us hear some of the authors on that score and see what they have to say.

The CHAIRMAN: It is perfectly open to the witness to make the suggestion. Proceed, Mr. Cooper.

The WITNESS: Now, the motion picture people would like to make a little suggestion with regard to section 5 for the consideration of your committee, Sir, namely, that there have to be a good many adaptations to a picture to make it into a good motion picture, and it is just a question in the minds of our solicitors as to whether this clause might not hamper motion picture production in the Dominion of Canada. We have not any motion picture production here at the present moment, but we are getting very close to it, and we will undoubtedly have some within the next year or two.

By the Chairman:

Q. It seems to me it must be left to the Court to decide as to whether any change which we make in regard to the production of a motion picture implies any destruction, mutilation or other modification of the same work which would be prejudicial to the honour or reputation of the author.—A. All we were going to suggest was the fact that the cinematograph necessarily means changes, and we suggest the following words.

Q. We will receive them for consideration?—A. "Provided that such changes, modifications, alterations and additions as are reasonably necessary to adapt literary or other work for cinematographic presentation shall not be deemed to be within the prohibition of this section."

By Mr. Rinfret:

Q. Do you think that a motion picture company should produce or build or prepare a film out of a literary work without the consent of the author?—A. Not at all Sir.

Q. You would not take that right?—A. No Sir.

Q. I cannot see your point?—A. Supposing an author sells the right to make a picture, say, Sir Gilbert Parker's "Seats of the Mighty." The motion picture production would necessarily require to make quite a number of changes to adapt that well known book to a proper presentation of the great events which it describes, and it might be that after the picture is produced Sir Gilbert Parker might bring an action under this section.

Mr. CHEVRIER: And quite properly so.

Mr. BURY: Why should not he? Why should you suggest that a moving picture producer should be allowed to take a man's work, and for the sake of adjusting or adapting it to motion picture representation, put something in that would be prejudicial to the honour or reputation of the author? You cannot exempt a motion picture from the law—from the same law that applies to anybody else.

The WITNESS: Perhaps not, sir; but if we make an agreement with the author and he hands over his book to be changed into a motion picture.

By the Chairman:

Q. Should you not stipulate in your contract that should you make certain changes, he will be estopped?—A. Yes, sir. It is difficult to do that in business.

Mr. CHEVRIER: Make your bargain with the author, but if you take his book you have to respect it. Make the bargain at the time you purchase.

The WITNESS: If this is going to be capped round by legislation and one thing and another, it will make it extremely difficult for motion pictures to purchase books in Canada. I do not say it would make it impossible.

Mr. BURY: May I say this, Mr. Chairman. Surely to goodness you have to protect the author. You cannot give carte blanche to a motion picture producer because he is a motion picture producer to do what nobody else can do.

The WITNESS: No, but he can ask the author to make this provision in his contract before he sells.

Mr. CHEVRIER: That is up to you.

The WITNESS: No, it is not. You add this as an over-riding. We are asking you to cut out section 5 or exempt us from section 5.

Mr. ERNST: That is letting you out.

The WITNESS: No, it is adding on.

By Mr. Ernst:

Q. Why should we give you statutory rights to the detriment of the author? —A. No, you are taking an author and considering that he is not a child and can make a contract, and you say, "no matter what you give away under your rights, we will protect you."

Q. Are you a lawyer?—A. No, sir.

Q. As a matter of fact you will find in drawing a contract it will give you leave to make any alterations?—A. I am not going any further than that.

By Mr. Bury:

Q. Suppose I produce a picture and I sell it to you and my name is on the picture, would you have a right to go and make a travesty of that picture with a pot of paint and a brush and say, "this is one of Bury's pictures." No, emphatically not. The reputation of the painter is not to be left in your hands? —A. You cannot put a novel as it is written for publication on the stage.

Mr. CHEVRIER: Leave it alone and get another one.

The WITNESS: If you want to put the Canadian authors so they cannot sell their stores all right.

The CHAIRMAN: If I were a judge and a simple assignment had been made to you of motion picture rights, I would hold that you could not make use of that assignment to destroy by ridicule or otherwise the reputation and honour of the man who was the author and assignee.

The WITNESS: All we asked for, sir, was that we be provided with such changes, multiplications or alterations as are reasonable and necessary.

By the Chairman:

Q. Well, can any modification be reasonable and necessary which allows you to destroy the reputation and honour of the author.—A. I see what you mean. I have been a member of the Author's Association for 23 years, and I know how easy their honour are infringed upon. I come to section 9 of the Bill. I am instructed, sir, by the theatre owners to present a protest against the repeal of registration. I think this protest, sir—

The CHAIRMAN: We are repealing section 40 simply because the universal opinion seems to be that section 40 has imposed conditions which it is impossible to comply with, and, rather than suggest objections to the repeal of section 40 would it not be better to make suggestions with regard to this proposed substitute clause?

Mr. CHEVRIER: Yes, that would be better.

The WITNESS: Well, then, I would say this, speaking on behalf of the theatre owners, we would prefer that instead of saying "may" register "shall" register.

Mr. BURY: Well, "may" is in the old Bill.

The WITNESS: Yes, but the objection is that in the old section the registration had to be made before the action was taken in the court.

Mr. BURY: No, it does not. What it says is this—

The WITNESS: Well, the general interpretation of the new section 40 is that it absolves the music publishers from registering their assignments. Now, assignments are being registered every month at the Copyright Office in Ottawa. I have a file, which has not been kept up for the last ten years, but I have a file for the last two years, and I think I can safely say that during the past two years there have been a number of assignments registered weekly. It is said that it was impossible to comply with this section, yet the facts are—I have not got the record—that assignments have been registered weekly for the past two years.

The CHAIRMAN: The objection is not so much with regard to the impossibility of procuring assignments in duplicate at the present time but due to the fact that before 1921, when this section was enacted, thousands of assignments had been made which were not in duplicate.

The WITNESS: We are quite willing to take out the words "in duplicate." That has nothing to do with us; that is only a governmental regulation. It does not help us a bit to have them in duplicate. We are quite willing that notarial copies should be filed. We are only interested in the result, they want to know who is the owner of a particular piece of music; we want to be able to find that out.

By Mr. Bury:

Q. And for that reason you want to make registration compulsory, is that right?—A. That is so.

Q. Now, what would be your penalty? Supposing you make registration compulsory and put in "shall" instead of "may", what would be the penalty of non-registration.—A. That is a matter for the government.

Q. The penalty of non-registration, according to the Bill, is merely that a man takes his risk of having someone else take the thing and register it before him. What would be the penalty of non-registration if registration was compulsory.—A. I cannot answer that question, sir.

Mr. CHEVRIER: Oh, you would go on and take it; if it was not registered you would go on and take it without paying fees.

By Mr. Bury:

Q. Is there any particular reason in respect of assignments of contract why the same thing should not apply to them as in respect to other assignments that require to be registered, namely, they are absolutely good as between the parties and they are only bad as between the first assignee and subsequent assignee for value without notice, which is a principle of equity.

The CHAIRMAN: In the meantime, the public is protected to a certain extent by the registration which is made.

By Hon. Mr. Rinfret:

Q. May I draw your attention to this. If you look up section 40 of the main act, in the last line of subsection 3 you will read "no grantee shall maintain...." and this has been before the courts. It went to the Privy Council and the Privy Council decided—I may not have the legal words—but unless you had registration you could not bring a man into court. So the penalty is not enough under the present Act, that you might have someone register than yourself, but if anyone else does that you cannot then go before the court.—A. I would sooner leave this point.

Q. That is what we insist must be amended.—A. I will leave this for Mr. Thomson to discuss with you, but I would like to point out that what I am

saying is this, that if a piece of music is played at one of our theatres, and this piece of music is a copyright piece of music, that after it has been played and they have witnessed the playing, that is, the people who are interested in the copyright, they can then register their assignment and bring action. It is not necessary to register the assignment before the infringement of the copyright.

Mr. CHEVRIER: Your solicitor knows better than that.

The WITNESS: Well, we will leave that for argument. But I will tell you, that is what is said to me.

Mr. CHEVRIER: This is some improvement, don't go and make it worse.

The WITNESS: I would say this, after discussing that point and having discharged my duties in respect to it, the theatre owners feel that section 10, which we now propose to discuss—

By the Chairman:

Q. That is, the new section.—A. Yes, the new section. We are opposed to that, as well as section 9. They would probably get as much protection as they have hitherto enjoyed under the old Copyright Act, but what I think is the fear in the mind of the theatre men who have considered this Bill is that possibly section 9 might pass through the House and section 10 might not and, therefore, in that case they would be deprived of all the protection which registration has given them and have no other remedy.

Mr. CHEVRIER: That is not so.

The WITNESS: As my justification for that I would like to read a telegram which I have received to-day, and I think it might be put on the record. It is from Mr. N. L. Nathanson. Mr. Nathanson was the man whose company took the case to the Privy Council. I would like to read his telegram if I may, Sir. It is addressed to me at the Chateau Laurier Hotel:—

> Regret impossible for me to come to Ottawa on Copyright situation as obliged return to New York this week. Feel very strongly that present Bill is unfair and should be fought in every possible way.

By Mr. Chevrier:

Q. The whole Bill is unfair.—A. I think the rest of his telegram will explain. Mr. Nathanson is not now as owner of a theatre.

The CHAIRMAN: Just start again.

The WITNESS:

> Regret impossible for me to come to Ottawa on Copyright situation as obliged return New York this week feel very strongly that present Bill is unfair and should be fought in every possible way can see no valid reason why present Act calling for registration should be repealed or revised as it is a protection for music users and certainly not unfair to holders of copyrights and so called Canadian Performing Rights Society hope you will have success in having registration portion of present Act retained.

By the Chairman:

Q. Is that the end of it.—A. That is the end of it, Sir. Mr. Nathanson is not the owner of a theatre, but he is the man who carried on this fight.

The CHAIRMAN: You have read it and the legal argument will be presented by your counsel.

By Hon. Mr. Rinfret:

Q. Do I understand, Mr. Cooper, that section 9 of the Bill is not acceptable, because of the fear that we might possibly enact section 10.—A. Yes. I think

that is the main fear. I would like also to read a telegram from the Secretary-Treasurer of the Independent Owners of the Province of Ontario. It is very short:—

> The Independent Theatre Owners of Ontario wish to place themselves on record as being opposed to the repeal of section 40 of the Copyright Act of 1921.

I would like also to read the resolution from the Motion Picture Association of Manitoba, dated Winnipeg, 8th May, 1931:—

> Resolved, that this Executive of the Motion Picture Association of Manitoba places itself on record as being opposed to the repeal of section 40 of the Copyright Act of 1921, which provides for registration of assignments of Musical Copyrights and which is therefore a great protection to the users of music, unless such repeal is accompanied by some legislation which will give us equal protection, such as the control of licence fees by the Government.

Hon. Mr. RINFRET: I do not want to comment on that, but it means that they are against this clause.

The CHAIRMAN: Let us hear the objections.

By Mr. Irvine:

Q. How would this clause affect you adversely.—A. Because they are not able to find out who owns certain pieces of music. Supposing you are going to produce a motion picture in Montreal or Quebec, you have got to put a certain amount of music into it. Now, there is a certain kind that would be suitable to go with the picture and they have to go out and find out who owns it, and we have only got the copyright office at Ottawa to which we can go for information.

By Mr. Chevrier:

Q. Don't you know the title of the music, or the owner of it, the publisher of it, and if he has not been dead for seven years.—A. The experience of the people who make the records indicates that sometimes that does not lead you to the right owner, and they have shown us that they have occasionally paid fees to a man whom they have found out afterwards did not own them. When Mr. Robertson comes along he can give you better evidence than I can on that.

By Mr. Irvine:

Q. I was of the opinion that the Performing Right Society licensed you to use any piece of music.—A. They do not sell us recording rights at all. They only sell performing rights to the theatre owners, but they do not grant any licence for recording.

By Mr. Bury:

Q. In other words, you have nothing to do with the Performing Right people at all practically.—A. No.

Q. Except if you want to get a song and you find its copyrights of reproduction are in the Performing Right Society, then you have got to get it from them.—A. And the Performing Right people have not got the recording rights. Registration at Ottawa not only helps the man who is looking for performing rights but it helps the man who is looking for recording rights, and recording rights are going to be very important in this country in a short time. We have now brought in sound wagons for the taking of sound news in this country, in the last few months. The Prime Minister's speech in connection with the new flotation was recorded the other day, and we have things of that kind. We will come to certain recordings on our sound wagons for the news reels in which

there will be music. Now, the Performing Right Society cannot help us in that respect because we must first get the recording rights. The recording rights and performing rights are two entirely different things.

By Mr. Chevrier:

Q. Now then, supposing you see immediately where you need this thing,—and if you can help me out so much the better. The Performing Right Society are the holders of the musical rights. Now, you want a place where the recording rights will be registered, and it means that there must be registration for every kind of right, is not that right.

The CHAIRMAN: There is at present, yes.

Mr. CHEVRIER: The Performing Right Society would have to file complete lists of their titles. What you want is that all the assignments of the recording rights should also be registered, not filed but registered.

The CHAIRMAN: As at present.

Mr. CHEVRIER: Yes. Now, you see where that leads. You have got to have duplication and registration of all kinds of rights.

The CHAIRMAN: The present situation is that any man in Canada can apply at the Copyright Office and find out within a half an hour, or an hour by wire, or by telephone, or by postcard, as to who are entitled here in Canada to grant recording rights as well as grant the other rights appertaining to copyright.

Mr. ROBERTSON: Did you say the present situation, Mr. Chairman.

The CHAIRMAN: Yes, You cannot succeed in an action in Canada with respect to recording rights or any other rights, except that the copyright is registered. I think there is no doubt about that.

The WITNESS: Well, I am sorry we have not a copy of the weekly list issued by the Copyright Office here. Mr. Robertson had one this morning, but you will see there the name of the publisher, the name of the author, and the title is given in each one of these registrations as published.

The CHAIRMAN: Quite so.

The WITNESS: Now, we know that if it is published by a certain firm in New York that firm belongs to the American Publishers' Association, and we know that we would have to get their consent. And there are certain others.

By Mr. Chevrier:

Q. There may be some merit in all of this and I am quite open to conviction, but if you make this a compulsory law on the number of titles you have got to register, and if it is compulsory there will have to be a fee go with it.

The WITNESS: Parliament tried to make it compulsory in 1921.

Mr. BURY: They did not make it compulsory in 1921. They said any grant of an interest in a Copyright either by an assignment or licence may be registered. Now then, apparently what the Privy Council went on was, the first part of that section is perfectly clear and perfectly consistent, but it ends up "and no grantee shall maintain any action." They did not say any action against the subsequent assignee, against the subsequent owner. In other words, it was the last part of that clause that was wider than the first part.

The WITNESS: Well, it has been talked about town for a long time that there was compulsory registration.

Mr. BURY: It is not compulsory.

The WITNESS: I am very glad to hear that.

Mr. BURY: Except that a man who does not register runs the consequence of the penalty fixed.

Hon. Mr. RINFRET: It is not compulsory. I sat on the original committee, and I do not think it was intended to make it compulsory. I think it is rather a mistake in the text of the Act, and when it went before the Privy Council the Lords of the Privy Council were inclined to think there was a mistake in the text, but they took the stand that it was not for them to correct it.

The CHAIRMAN: Why discuss hypothetical issues: The section includes these words "and no grantee shall maintain any action under this Act unless his and each such prior grant has been registered." Now, you wish that retained.

The WITNESS: Well, naturally these people who took the case to the Privy Council and spent $40,000 or $50,000—

By the Chairman:

Q. Now, you wish that retained, and Mr. Bury has pointed out to you that while it is discretionary and optional with the assignee of copyright to register, nevertheless the penalty imposed is such as to make it compulsory for each assignee of an author to register, in order that his copyright may be effectively maintained against those who infringe it.—A. Well, you see that there has been a certain talk about impossibility of registration of assignment. I point out again that the New York publishers have been recording assignments for the last two years.

Q. Let me point out to you clearly, it seemed to me beyond the possibility of a doubt, that many instances were shown in which assignments of copyright had been made during the lifetime of the author which were not made in duplicate, and that, therefore, after the death of the author it was impracticable and impossible to secure a duplicate assignment from the author who died. That was one of the objections to the proposed section.—A. I would say on behalf of the people I represent that they would be quite willing to make it as simple as it is possible to make it, and make it as easy as possible to register the assignment.

Q. The second objection, which may not be so weighty, is that to make it practically compulsory, as the present section does, would entail the payment of a fee of $1 for registration of each assignment. Of course, that could be remedied by remitting the charge for registration.—A. Well, I think we would be also willing to do this, sir, to have that original section 40 amended so as not to apply to any assignments previous to 1921. I mean they are not insisting on a pound of flesh at all, sir, or any attitude of that kind, but they want to get some sort of registration at Ottawa.

Q. I sympathize with that idea, that is, with regard to a property right such as this there should be some way of ascertaining in whom the right subsists, in whom it is vested.—A. Well, sir, I am discussing section 40, the repeal of section 40 entirely by itself, and not in relation to any section, because that telegram shows that some of the theatre owners believe that perhaps the new section may be a better substitute. However, it is my duty to give you the arguments as I got them from my people with regard to section 40 irrespective of what you are doing under the new section.

Q. Well, we are glad to hear you state it. We do not know whether we will accept your suggestion or not.—A. I am glad to have the privilege of stating it. Then I come to section 10, which is the new section, and over which there is so much controversy, and while I think that the theatre owners of Canada for whom I speak approve of the general principle of that section, the motion picture producers—and I do not think they would find any fault with it at all, that is, the theatre owners—I think most of them would agree that section 10 is a very good substitute providing you have decided to repeal the old section 40 of the Act. But another difficulty arises, sir, and the motion picture producers—

Q. Will you allow me to ask a question. This section 10, in terms deals with the issue or grant of licence for the performance. Does the making of a film come within the scope "performance"? I understood you to say that it did not.—A. Well, our solicitor advises me that he thinks it does, and the solicitors in New York—

Q. In other words, are recording rights separate and distinct from performing rights.—A. Yes, sir.

Q. That is your contention.—A. Yes.

Q. Now, if recording rights are separate and distinct from performing rights, then might I suggest grave doubts as to whether recording rights come within the signification of the words "performance".—A. The definition of "performance" is given on page 2:—

> "Performance" means any acoustic representation of a work or any visual representation of any dramatic action in a work, including a representation made by means of any mechanical instrument or by radio communication.

By Mr. Bury:

Q. Is not this rather a legal question?—A. Yes. I will be glad to leave that point to our solicitor, if you prefer. But I would just like to say this, that when we first heard of section 10 we thought it referred only to the performing rights in music, and if it refers only to the performing rights in music then we have no objection to it. But if literary and artistic work brings the motion pictures within the scope of this section then we are obliged to register a protest.

The CHAIRMAN: Well, I thank you very much for that suggestion because it is helpful.

The WITNESS: I might say, sir, that we have consulted with the book publishers, and I have a memorandum from them which I presume has been laid before your committee, sir.

By the Chairman:

Q. Would it meet your views if section 10 were amended so as to read, "licensed for the performance in Canada of any musical work." That would clearly cut out the mechanical recording, would it not?—A. It would certainly narrow the effect of the section, and I think would be acceptable.

Mr. BURY: Why, that would cut you people out, the recording people out; it will cut out the other people who reproduce. I mean when a performance includes the creation, the manufacture of a mechanical reproduction, whether the performance includes your work or not it certainly includes the work of the producers. Now, if you are going to cut out literary, dramatic or artistic work you are cutting it out not merely for you but for them.

The WITNESS: We would much prefer to have a clause added somewhere saying that the principles of this clause do not apply to cinematograph productions.—A. We would much prefer to have the clause added somewhere saying the provisions of this clause do not apply to cinematograph productions.

By the Chairman:

Q. Or to mechanical productions?—A. I am only speaking for cinematograph.

Mr. BURY: I think the better plan is to alter your definition of "performance".

The CHAIRMAN: As the word "performance" does not include the manufacture of the records, but only includes the representation of the particular work, that is a matter, in view of your representation, we will consider.—A.

May I bring up this point and if counsel has any suggestions to make which he thinks will be helpful he can make them when he—

Q. We will proceed with the rest of your evidence?—A. I would like to say something about the reasonableness. Having expressed our general attitude towards the bill, I would like to say something about the reasons why the motion picture theatres in the past have been slow and somewhat reluctant to deal with performing right societies, because that point has been brought out and I think it is just as well for me to clarify it. I may not satisfy the committee with my explanation, but I will do the best I can.

I will explain some of the differences of the motion picture theatre owners and other users of music with whom I come in contact, they were slow in dealing with the Performing Right Society of Canada, and other performing right associations; because I think it is only fair to the people I represent, I don't suppose any person else is interested in this little bit of history, but it won't take more than a moment or two and it answers Mr. Irvine's question.

In about 1924 or 1925, the British society established a branch here known as the Canadian Performing Right Society, and we were rather shocked, because we did not know much about performing rights and we found a new claim made upon us, and naturally as business men we wanted to investigate that claim. We had some conversation with the Canadian Performing Right Society and also with Mr. Woodhouse who came over to Canada and was good enough to come to my office and try to explain to me what the situation was.

By the Chairman:

Q. Is he a representative of the British Performing Right Society?—A. He was the managing director at that time of the British Performing Right Society.

Mr. HAWKES: Controller.—A. Controller was the official title, which would mean the same thing, pretty near. We examined into their claim and we found that the fees demanded by the British Performing Right Society were equal to, and in some cases a little higher than the British society was charging at home. Naturally, we thought that that required a little explanation, and we endeavoured to get that explanation, and we then—I do not remember just what the explanation was, but they kept us working for a time. Then we suggested to them that we were put in an awkward position; about 75 per cent of the music used in Canada by the people with whom I was connected was American music—that that time we had orchestras—that was before sound pictures came in—I went through our repertoire and we found about 75 per cent of the music was American. Of course, that would vary from theatre to theatre, some might use more British and less American and some might use more American and less British, but classifying them in a general way we figured that about 75 per cent of the music came to us from America and about 25 per cent from Great Britain, which would include the French and German music that British Performing Right societies control. So, we said to them, "Now, if we pay you a fee for a theatre, say $100 a year, we pay you this fee which corresponds to the fee, same as the fee you have to pay in England, it seems fair enough but these fees are not similar. That is our difficulty, because the American society of Authors, Composers and Publishers may come down to Ottawa and appear before the copyright committee in connection with the bill introduced by a member of this present committee, and they would then demand from us three times the fee that you are demanding, because we use three times as much of their music; and if we admit that we should pay you $100, we are then in the unfortunate position, we put ourselves in the unfortunate position of finding that we owe the American society of authors, composers and publishers $300." We felt that we were getting on very dangerous ground. We suggested at a meeting, held in my office, attended by Mr. Boozey.

one of the directors of the British Performing Right Society, that the two societies should come together. Mr. Mills then—

Q. The two societies, the American and the English?—A. Yes. Mr. Mills represented the American society of composers, authors and publishers, and Mr. Boosey represented the British society, Mr. Arthur Cohen and myself represented the users of music in Canada. So, we suggested, as a result of that conference, that there should be one licence, otherwise we were between the upper and nether millstone, because we wanted to deal fairly with everybody and yet we did not want to pay too much, to pay any more money than we had to; and they received that suggestion very kindly. And I think I might say that Mr. Jamieson received us very courteously and took it into consideration. As a result, last June the American and the Canadian and British societies combined in their own issue the Canadian Performing Right Society; and they then offered to the author, owners and broadcasters of Canada one licence, and I would like to put on record, sir, that this performing right society deserves a good deal of credit for having got together and tried to give us a reasonable licence. I have quarrelled with various owners so it won't hurt me to say, at least partially, a kind word for them here, and that has made the situation much easier. We then went on to about October of last year. I thought we were getting along very fine, but we did not get along as well as we might. I thought we were pretty near a solution of this question; and on October 10th I wrote the following letter to Mr. Jamieson of the Canadian Performing Right Society:

My dear Jamieson,

Some time ago you and I exchanged letters in which we suggested that we should have a conference about performing right licences when the Musical Protective Society had arrived at a definite policy. I think the time has come when such a conference should be held if you are still of the same mind.

Yours Sincerely,

(Sgd.) JOHN A. COOPER.

I wrote that on behalf of the Musical Protective Society, and on behalf of the interests which I represent.

Q. Will you tell me what the Musical Protective Society is?—A. That was a society consisting of broadcasters, hotels, dancing academies, theatre owners, etc. We had to have some association who took an interest in the work we were doing.

Q. Combinations seem to be necessary in this modern world.—A. I got this reply:

Col. JOHN A. COOPER,
Motion Picture Distributors,
Metropolitan Bldg.,
Toronto, Ont.

OCTOBER 14, 1931.

Dear Col. COOPER,—I have received your letter of the 10th inst., but cannot accept your offer. Our negotiations must now be conducted directly with the establishments requiring our licence.

Faithfully yours,

(Sgd.) H. T. JAMIESON,
President.

He was perfectly within his rights in refusing to meet me. I merely wished to show some of the difficulties which we had had.

Q. He refused to deal with you as a representative of a number of——A. Music users. He was quite within his rights, sir, I am just showing some of our difficulties.

Q. Did he insist he would only deal with individual users of music?—A. Yes sir, correct.

Now then, a little later on we had Mr. Rosenthal who was, I might say, quite willing to meet us. Mr. Rosenthal came up from New York and he—Mr. Rosenthal is a director of the American society of Authors, Composers and Publishers. He came up to Toronto and he and Mr. Jamieson, in spite of Mr. Jamieson's letter, met with Mr. Cohen, Mr. Atkinson of the Toronto Star, who represented the broadcasters, Mr. Watters of the Canadian National Exhibition, who represented the theatres and exhibitions of Canada, and myself; and we had a long talk, and I have a memorandum of what took place. Practically the only difference that lay at that time, after that conference—it was a very pleasant conference in which they met us—and the only point was a suggestion on our part that they should give us an arbitration clause in their Canadian licences. We have arbitration clauses in all motion picture licences and we suggested that we shoulld have an arbitration clause.

Q. For what purpose? To determine your rates?—A. When the licence came to be renewed if a man thought he was being asked too much for his renewal he could have it arbitrated to see whether it was a fair increase or not.

By Mr. Bury:

Q. Was that only in the case of renewals, and not in the case of an original contract?—A. No, not in the case of original contracts. They considered that and they decided that they could not grant us arbitration, that they could not put arbitration in the contract, but they did make a concession in it. They offered us contracts, I understand to the authors, I do not know whether it applies to broadcasters or not, for five years. That is what took place.

Q. May I ask you a question. In England you usually make contracts for five years?

Q. In England you usually hake your contracts for five years?—A. With the theatres. I would like to deal for a moment with the question of why there is a fear in the minds of the theatres that when they come to renewals even of a five year contract, there might be some difficulty. I want to say finally that the Famous Players Canadian Corporation, which is the largest theatre owning corporation in Canada, accepted the Canadian Performing Rights offer of a five year contract, and they actually took out a licence for all their theatres in Canada at ten cents a seat, I think, and I would like to point out that that ten cents a seat was lower, because it covered the United States' music, it covered other music, it covered whatever rights they have in French and German music; and although it covered more music it is at a lower rate than the British Performing Rights Society asked.

By the Chairman:

Q. They asked ten cents a seat?—A. Per annum.

Q. Ten cents for each seat of the seating capacity of a theatre?—A. A theatre with one thousand seats would pay one hundred dollars a year. Now, I just want to say that some of our people—while the smaller theatre owners would be a little more timid, the bigger theatre owners have got free from timidity and are paying the fees. I do not want anybody to think, sir, if I may be so bold—I think somebody used the word "pirates." I do not think it was used in any nasty sense, but any person who used that, I think, was unnecessarily reflecting upon the people who use music in Canada, and who should pay their fees, and I rather resented the word "pirates." I am glad I have forgotten who made the remark.

Mr. CHEVRIER: That is very Christian like.

The WITNESS: Yes, Sir, that is my characteristic. Now, there is just one other point in connection with this, Sir. In connection with this five year contract in England, the British Performing Rights Society had a five year contract with the Cinematograph Exhibitors Association of Great Britain, an organization comprising I think about three thousand exhibitors in Great Britain. The agreement, I believe, expired—the five year agreement expired on April 6, 1930. When it came to be renewed—all the information I have or most of it comes to me from the English papers. I have here on my file the Cinematographic Weekly—a clipping from the Cinematographic Weekly of March 20, 1930, and it gives the reports of the Cinematograph exhibitors, the CEA Committee, on their negotiations with the British Performing Rights Society, and I would like to read the opening paragraph if I may, Sir:—

> Your Committee has met the P.R.S. and discussed at very great length a new agreement. The P.R.S. pointed out to us that since the last agreement was negotiated, all the popular music publishers had joined their Society, and that for practical purposes they were one hundred per cent strong. They asked for increased fees which we calculated would, in bulk, amount to an increase of about 600 per cent. This your Committee flatly declined to pay.

Now, I am not saying that this demand of the P.R.S. of Breat Britain was wrong, because I do not know; but I am just pointing out to you that if the theatre owners and others in Canada have been slow about paying the performing rights, it will not be charged to us necessarily that we are pirates; they have had some reason for their timidity. I would also like to read an editorial in the same paper, which is a well known paper published over there, I think the leading weekly in England—

The CHAIRMAN: I wonder now whether we should go into these things, because any person who is interested will look at the debates of the House of Commons in England of 22nd November, 1929, and will see these matters discussed for his information. Newspaper comment is hardly evidence.

The WITNESS: All right, Sir. Now, I would like to make just one further point. On page 4 of Memo. A submitted by the Performing Rights Society, it reads there that, I think, theatres are only asked to pay three or four dollars a week. Is that correct?

Mr. ERNST: Yes. Large theatres.

The WITNESS: That may be true.

Mr. ERNST: It appears about seven lines from the bottom of that page.

The WITNESS: I have here in my hand a list of the licences charged in England which I will be glad to file as an exhibit.

The CHAIRMAN: I wish you would file it as it may be important.

The WITNESS: Yes, Sir. May I on this point say that on a theatre such as they describe on page 4, the fee in England is £312 per annum, or fifteen hundred dollars per year, which would mean thirty dollars a week.

By Mr. Bury:

Q. That is the annual fee?—A. Yes, that does not say they are paying that in Canada.

By Mr. Chevrier:

Q. What is the Canadian fee?—A. I do not know, Sir. I am only showing you why we have timidity.

Q. What have you been paying in the past?—A. We have paid just as much in Canada as the United States has paid to Great Britain for performing

rights in the last ten years, although the United States are ten time more than we are—twelve times.

Q. And you think that by the insertion of Subsection V in Section 1 that will cure everything?—A. Yes.

Q. Your contention is that Subsection B of Section 1, Section 10—that if that was embodied in the law that would be your protection; that would solve your difficulties?—A. I want to show you that there is another side to this question.

Q. Is that the remedy that you are suggesting?—A. I am not suggesting any remedy.

Q. What do you say as to Subsection B. Do you want it or do you not want it?—A. I thought we had finished with that.

Q. Now you have raised that point.

By Mr. Ernst:

Q. I would like to have the views of the witness who is a practical man, because we have had the opposite view as to what has been done, whether he thinks Section B is practicable. I ask for a frank opinion of it?—A. "A statement of all fees, charges or royalties. . ." is that the question?

Q. Yes?—A. What I would say about that is that we should have a statement of their tariffs.

Q. You mean blanket tariffs, not individual tariffs?—A. No, individual tariffs. They have already filed a tariff of fees here. I think they could do that, and I think that should be accepted as satisfactory. I think the idea of asking—I am not expressing a personal opinion—the idea of asking them to file a fee for individual pieces of music is hardly wise.

Q. I am very grateful for that frank expression. Now, let us go a step further and take subsection 2. If you cannot speak for those whom you represent, can you speak personally as to Subsection 2 of Section 10?—A. You mean the right of the Governor in Council?

Q. Do you think the Governor in Council should be the tribunal?—A. As a Canadian, I have been taught to trust the government of the day, and I have no reason to find any fault with it.

Q. That is an answer in principle rather than in practice. My question is this: do you, from your experience in matters of this nature, believe that the Governor in Council is a tribunal of such constitution that it can properly deal with these matters.

The CHAIRMAN: It depends on how council deals with them.

Mr. ERNST: I feel that it means setting up in the Secretary of State's Department something of the type of a Tariff Board of experts. I do not see how else it will be dealt with.

The CHAIRMAN: The witness does not know; but it will probably be dealt with by the appointment of an independent commissioner to hear the evidence and report to the Governor in Council who will decide the same.

Mr. ERNST: I am very grateful for that.

Mr. CHEVRIER: I would like to hear the answer.

By Mr. Ernst:

Q. I would like to hear that. I do not want to know what they do somewhere else; I want your personal opinion?—A. I cannot give you my personal opinion. As the Minister says, I do not know anything about it.

Q. I do not think the Minister meant to preclude you from giving your personal opinion. We will take it for what it is worth?—A. I am going to stand between the Minister and yourself by saying that I like the suggestion that was made by the Minister of Justice in South Africa. I think I have it on file. That

was—it has never been made law, but it struck me as a pretty fair suggestion—that on November of each year the Performing Rights Society should file a list of the tariffs that they will charge during the following year, and that this tariff should be published sufficiently to give all the people who have to pay a chance to know what the tariffs would be, and to make any protest they desired against those tariffs, and at the end of that time, at the end of thirty days, three gentlemen, one a government official, one, I think, representing the Performing Rights Society, and someone else, a lawyer it is stipulated—

The CHAIRMAN: A third arbitrator appointed by the government.

The WITNESS: An arbitrator appointed by the government. They should fix the fees and they should be promulgated by order in council, and those should be the fees for the following year. It struck me that that was a very fair way of arriving at it because it gave to everybody a chance, and it was only fixed for one year.

By Mr. Chevrier:

Q. Now, let us follow that through. Let me put this question to you. As long as the motion pictures are protected by copyright, are you, the distributors which you represent, willing to let the Governor in Council or any other body under government control order that you file the charges at which you shall render your copyright on films to the motion picture exhibitors?—A. Not necessarily. Personally I could not say.

Q. What is sauce for the goose ought to be sauce for the gander?—A. I am not going to admit that we are a gander. In the British Committee where they dealt with the regulation of rates, clause 18, page 5—may I read that section, sir? You read it, I think, this morning.

Q. Is that an answer to the question I put to you?—A. Yes, I think so. "Your Committee consider that such a super-monopoly can abuse its powers by refusing to grant licences upon reasonable terms so as to prejudice the trade or industry of persons carrying on business in this country, and to be contrary to the public interest and that it should be open to those persons to obtain relief in respect of such abuse by appeal to arbitration or to some other tribunal. This should apply only in those cases where the ownership or control of copyright has been transferred to an association." That is my answer.

Q. My question is—you can say yes or no to this question—you have got the motion pictures and they are protected by copyright. Are you as distributors, willing to let the Governor in Council or any other body under government control—I was going to ask you to regulate the price—but now we have changed it—are you willing to let that body order the filing of tariffs at which you should render your copyrighted films to motion picture exhibitors? I want to know yes or no?—A. Mr. Chairman, at the present time there is a report on this subject before the Minister of Labour.

The CHAIRMAN: I quite agree with that. The matter is now before the government.

The WITNESS: I do not think I should be asked—

The CHAIRMAN: There has been an investigation made under the Combines Investigation Act, and it is now pending before a department of government for report to the governor in council, for such action as it may be deemed advisable to take in respect of an alleged combine; and, therefore, inasmuch as the witness is a party to this investigation I do not think that he should be called upon, in a matter which does not concern this Bill, except incidentally, to give an opinion with respect to a matter now pending against him.

Mr. CHEVRIER: It is not going to prejudice him at all. The evidence on that investigation, Mr. Chairman, is all in. I understand it may be tabled in a very short while. It is a very fair question.

The CHAIRMAN: I have always had an objection to compelling people who are susceptible to criminal prosecution to make such answers on oath as might lead to their condemnation.

Mr. CHEVRIER: I ask him now if on behalf of exhibitors he is willing to submit to the same test that he wants others to be submitted to.

The CHAIRMAN: That implies that they are in exactly the same position, which undoubtedly they are not.

Mr. CHEVRIER: There may be something special about it, but, this I submit, is a very fair question.

The CHAIRMAN: Unless the Film Producers are a combination such as the evidence shows the Canadian Performing Right Society to be, why, I do not think that you can demand an answer yes or no to that question, and I do not think that it is the privilege of this committee at the present time to determine whether such a combination exists or not.

Mr. CHEVRIER: I am not suggesting that it does exist at all. I am simply asking him whether he is satisfied to have those same tariffs filed so that they may be regulated by the Governor in Council, subject to the other proceedings that the Chairman has just enunciated.

The CHAIRMAN: I rule the question out of order. I do not think the wtness should be compelled, on oath, to answer.

Mr. CHEVRIER: I insist that it is a very proper question, and I do not think it is fair for you to rule against it.

The WITNESS: May I say this: Perhaps Mr. Chevrier may not be aware that the report which is now before the government is termed an interim report.

Mr. CHEVRIER: This answer cannot interfere in any way with that. However, the Chairman has ruled against it.

The WITNESS: I am sorry. But I might add this about tariffs without giving the answer to Mr. Chevrier, that there are no tariffs among distributors of motion pictures. There might possibly be a tariff—

By Mr. Bury:

Q. You mean that there is no fixed flat definite rate.—A. No fixed rate.

Mr. CHEVRIER: The same principle applies as in the performing rights. Your picture may be good in one centre and it may not be good in another, just as a song may be good in one centre and not in another.

By Mr. Irvine:

Q. How many organizations or companies are in this association called the Motion Picture Association of Canada.—A. There are about ten companies, sir, In addition, we had some exhibitor members and we dropped them and we are only a distributor organization.

By Mr. Ernst:

Q. What percentage of those are operating in Canada.—A. Ninety-nine per cent I mean 99 per cent of the product is handled by them, practically unanimous.

By the Chairman:

Q. But the evidence is, as I understand it, that the members of this association are competitors.—A. Correct, sir.

By Mr. Bury:

Q. Is there any difficulty about filing the fees, or scale of fees as they exist now.—A. Not if you asked us to just file the range of fees. For instance, the

range of fees in the city of Ottawa would run from about $25 up to $3,000 or $4,000.

By Mr. Chevrier:

Q. For what length of time.—A. For one showing.

Q. That would be one day.—A. According to the theatre. In some theatres it would be three days and in some theatres six days. In the Keith theatre, for example, it would be six days.

Q. Six days for $3,000.—A. Yes, depending upon picture.

By Mr. Bury:

Q. What I want to know is this: Have you any diffidence in filing the rates as you have them now, your present rates.—A. We could file the fees that we have charged in the past six months, file them for six months, but you cannot file them in advance.

Q. But those are the fees that you charge in advance.—A. For instance, we could do this: We could show the government, if it so desired, that the first run picture is shown in one large theatre in each large centre, and that the price paid for the first run picture will take in from $1,000 up to $5,000. I know of one case where it ran $8,000 or $9,000. In the case of Rio Rita it ran in the Capital Theatre of Montreal—

The CHAIRMAN: I would suggest this enquiry is quite beyond the scope of this Bill.

Mr. BURY: What I am getting at is this, here is clause B., a statement of all fees, charges and royalties.

The CHAIRMAN: Which does not apply to this company at all.

Mr. CHEVRIER: But he objects to the principle, Mr. Chairman.

The WITNESS: We did not say so. We did not say that we objected to the principle.

By Hon. Mr. Rinfret:

Q. You have just mentioned Rio Rita. I do not think you will deny that the music was the main part of that motion picture.—A. I have never seen the motion picture.

Q. The main interest that the public took in that picture was in the music.

By Mr. Chevrier:

Q. Would it not be possible for your company to say in advance what should be charged on a motion picture of that kind.—A. Not until it is shown in the bigger centres.

Q. Why do you expect the composer to know in advance.

The CHAIRMAN: There is nothing in this Act which fixes the fee that a composer may charge, and there is no intention in this Act to fix such a fee.

Mr. CHEVRIER: We are only playing on words.

The WITNESS: I have already said in my evidence—

Hon. Mr. RINFRET: We had a witness this morning who said in so many words that it was impossible for a composer to collect his fees, that he had to go to some company and ask the company to do it for him.

The CHAIRMAN: I know, but you accepted that with a very large limitation.

Mr. CHEVRIER: What is the difference there between a company, an association giving a statement of all fees, charges of royalties that such society, association or company proposes to collect in compensation for the issue or grant

of licence in respect of the performance on each of said works, where is the difference so far as Mr. Cooper is concerned? Mr. Cooper says that they cannot tell beforehand what the charges will be.

Mr. BURY: But if the Chairman is correct and this thing has nothing to do with Mr. Cooper's business then what business has he to be giving evidence on it.

Hon. Mr. RINFRET: Except, Mr. Bury, by comparison. We are asking the Performing Right Society for something that no one can do.

The CHAIRMAN: That is a matter for discussion.

Mr. CHEVRIER: I cannot see a distinction in the principle. If you start off with A or B it does not make a bit of difference whether it is X Y Z in the first instance or A B in the second instance; if Mr. Cooper's interests cannot say beforehand what they can charge for a motion picture, then nobody else can.

The CHAIRMAN: Mr. Cooper has said that he does fix a charge at the outset, that as the picture becomes more in use they decrease that charge. He has not said that they cannot fix a charge. He has declared that they fix it in every case.

Mr. BURY: And I understood him to say that he could file his charges.

The WITNESS: The companies could file the charges that they have made for certain pictures. It is only a theoretical question, because, as I understand it the motion pictures do not come under this.

By the Chairman:

Q. Have you anything further to say, Mr. Cooper?—A. That is my case, sir. I would just like to put in an Exhibit, if I may.

Q. What is the nature of the exhibit?—A. This is a personal thing. It is an investigation that was made when I was on a committee of the Canadian Authors' Association with regard to Canadian composers.

Q. I do not think that should be filed as an exhibit. Have you copies of that for the information of the members?—A. I thought it would be interesting.

Q. Well, I do not think we should undertake to republish that in our proceedings.—A. Well, may I give this to the Chairman for his personal information?

Q. Give us each one if you have copies.—A. It is a list of Canadian composers, to show that there are large musical interests in Canada which have not yet been recognized, and which I think might be recognized.

Q. Do you mean to say that this list of Canadian composers comprises composers who are not within the combination represented by the Canadian Performing Rights Society?—A. With one or two exceptions, yes. I could count three or four years ago a list of Canadian composers who had already published music, and I think out of this 200 not more than one or two of them have ever been on the list of any Performing Right Association.

The CHAIRMAN: That is relevant, I suppose.

The WITNESS: And what I was pointing out, the list could be increased considerably now.

Mr. ERNST: As a matter of fact, they have a representative of their own who intends to appear before the committee.

By Mr. Bury:

Q. Have the authors formed an association of their own?—A. I think they formed an association recently, some of them. I do not think it is in shape yet. But I have been interested for a great many years in the development of Canadian literature and Canadian art. At one time I was editor of the Cana-

dian Magazine. I was also Art Director, Canadian National Exhibition. But I have also been interested in the development of Canadian music, and I think something should be done to help the Canadian composer to get on his feet. The Canadian artist is on his feet. The Canadian literary man is on his feet, but I think the Canadian composer should be given consideration. I do not know whether it properly comes before your committee or not but I suggest that on my own initiative as a citizen and not as a representative of the Motion Picture Association.

Witness retired.

GORDON V. THOMSON, called and sworn.

By Mr. Irvine:

Q. Whom do you represent here, Mr. Thomson.—A. I was asked to come down to speak on behalf of the Authors and Composers Association of Canada. The organization of that Association is as follows: Honorary President, Mr. Hector Charlesworth, of Toronto Saturday Night, Honorary Vice-President, Albert Ham, Musical Doctor; President, Ernest MacMillan, Principal of the Toronto Conservatory of Music. Vice-President, Donald Heins, formerly Director of Music in Ottawa, I believe. Secretary-Treasurer, Peter C. Kennedy, 65 Lascelles Blvd., Toronto. And then the Executive Committee is listed here and a number of musicians and composers.

By the Chairman:

Q. Is your statement printed.—A. Yes, Sir. Unfortunately, gentlemen, I was asked to come down to represent this association about an hour before train time and I have no prepared statement to make on behalf of that society other than this printed memo, which is the only official statement which I should really make on behalf of that association. We have sent that to several members of the committee.

I might just say this, that I was the first President and Organizer of the Authors and Composers Association, in 1919. I have written a great many war songs that have had extreme popularity. I had the same experience as Lieutenant Gitz Rice in a great many of my rights. Therefore, at the one time in my life I had a chance to make a real winning as the result of writing popular songs such as "When We Wind Up The Watch on The Rhine" and "When Your Boy Comes Back To You" and several other war songs, which had a sale up to around a million copies, I got no protection in the United States because of the reciprocal clauses in the American Act which did not give me protection because I was a Canadian and we did not give protection to Americans in Canada. Some of the members of this committee will recall that incident. After making an effort to sell my Canadian war songs in the United States, I came back very much vexed and cross that I was put in that peculiar position of being driven out of my own country in order to get my rights and become a resident of the United States. But I absolutely refused to do that. I came back and organized the association in Canada. As I say, I was the first President. Then I went into the publishing business representing an American concern, and at that time I resigned the presidency of the association and new officers were elected. Meetings were called for a while and then it dropped into a state of coma for several years. The constitution provided for its continuation until new officers were elected. We had a reorganization meeting recently and elected those officers, Sir. We have appointed a Copyright committee. We have discussed this subject of copyright. The memorandum that we submit there is submitted on behalf of these Canadians who perhaps have not the experience to deal with the subject of copyright to the detailed extent

that the representatives of the Performing Right Society have. But we are, in general, taking this position, that we feel that a Canadian writing under the present law has protection for his performing right. He has the same protection that the writer in Britain has. He has even more protection than the writer in the United States has. He does not want that right diminished.

The CHAIRMAN: Just a moment. You are leading us into a long discussion. But you say here, if I may quote 17.

> Some objection has been taken to the Canadian Performing Rights Society. We are not affiliated with that or any other Society, but we submit that some association or agency must be in existence to protect authors' rights in all parts of the country. If one of our Montreal members writes a song, who deal with an infringement of his rights in Winnipeg or Vancouver except a local agent or representative of some such Society. Similarly, an agent is necessary to protect such copyright in England or foreign countries. Therefore, whatever is done to embarrass such associations cripples and embarrasses to the same extent our Canadian authors and composers.

You do not object to that.—A. No.

Q. But you do not undertake unless as a Society of Authors and Composers Association in Canada to yourselves receiving assignments of Performing Rights, and unless you as an Association grant licences for performing rights and receive compensation therefor, I do not think you come within this Bill, and if you do come within the Bill, in those circumstances I am perfectly prepared to consider favourably with my associates on this committee introducing such words into the Bill as would exclude you so long as you did not enter into that general business. I think you are perfectly right in organizing an organization to protect your rights.

Q. I think you are perfectly right in making an association to protect your rights.—A. We are looking for the protection of Canadian authors. We want to produce works; we want to have them produced.

Q. Quite so. I am not now dealing with your association. Insofar as you confine the work of your association to this memorandum, it is my opinion you do not come within the scope of this bill, and it is not the intention that you should come within the section.

By Mr. Bury:

Q. You do not take assignments of copyright. Your association does not take assignments of copyright?—A. It has not done so far.

Q. Does it intend to do so?—A. We intend to some way, if there is any way in which Canadians can be protected or get a fair share of any remuneration that may come as a result of performing fees, we are very interested in that, sir.

By the Chairman:

Q. I do not think we interfere with that.—A. I just want to say we have an opportunity in Canada under performing rights to get revenue for Canadian composers.

Q. Quite so, and we feel your memorandum should not be printed in our proceedings, but kept for the guidance of the members of the committee in their own discussion with regard to modification of this bill.—A. Sir, we feel that when we leave our case in the hands of the committee, we feel that you gentlemen, who are Canadians, will be interested in the development of art and songs in Canada, and that you will protect our interests; and all we ask is that our rights be not disminished until and unless practice shows that it is necessary to take such a step.

Q. We are not diminishing any rights that you exercise at present, anyway. —A. Our statement of the case is there with you, and we would like to have it printed in the record.

Q. It is distributed to every member of the house, and the reason it is not printed is because we are endeavouring to keep down printing bills, and not to exceed our appropriation.

By Mr. Bury:

Q. The moment authors and composers start the business of acquiring assignments and licensing copyright you come within the bill?—A. Certainly sir; and it might diminish our rights. That is what we are afraid of.

Q. That is your own business.

By Mr. Irvine:

Q. There will be no diminution unless you come under the act. It will be up to yourself whether you do or not.—A. It would, if our rights were assigned to performing right societies. I can give you an example.

The CHAIRMAN: Quite so.—A. I will give you my own experience, Sir. I sold a song in the United States to the biggest publisher in the United States, Leo Feist, "When We Wind Up the Watch on the Rhine." They took it and told me they were going to make it their outstanding song, were going to put all their energy behind it, and later they found out that I as a Canadian, did not have equal rights with an American, I didn't have the mechanical rights in that song, and they dropped the song. I got $1,000 royalty instead of probably $10,000 or $20,000 and therefore I am very much interested, as a song writer, in the rights of the people to whom I assign songs, because they have no rights except what I give them.

By Mr. Ernst:

Q. Is it your opinion that you can continue as an individual and compete? —A. No sir.

Q. Do you consider it necessary to combine in some way with your fellow composers?—A. Yes, sir. I might want to assign my rights to the Performing Right Society, and I want the full privilege of my rights that a British author has under the British law in Great Britain. I am a British citizen and as such I claim an equal right under the British law as the composer in Great Britain has under the performing rights there.

Q. Then, to carry it a step further. Do you consider your association can do efficient work for its members unless it widens its scope of activities along the line suggested?—A. I think ultimately we will have to make some such arrangement.

The CHAIRMAN: That is problematical.

Mr. ERNST: I am asking about his experience.

The CHAIRMAN: He is simply making a supposition.—A. We have got to look at that in that light. That is the trouble in Canada, we have not been looking ahead.

Q. We are looking ahead now.—A. If you look ahead on behalf of Canadian authors we are very happy to leave it with you, sir.

The CHAIRMAN: This committee will now adjourn.

Discussion followed and, after discussion, committee adjourned at 6.10 p.m. until 10.30 o'clock a.m. Wednesday.

SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

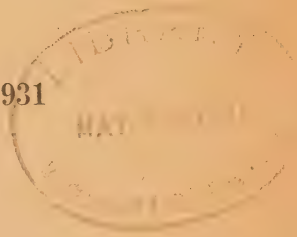
ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 4

WEDNESDAY, MAY 20, 1931



WITNESSES:

Mr. E. Blake Robertson, Ottawa, Representative of Fair and Exhibition Associations of Canada and various Agricultural Societies.

Mr. Howard Angus Kennedy, Montreal, National Secretary, Canadian Authors' Association.

Mr. Bernard K. Sandwell, Montreal, Chairman, Copyright Committee, Canadian Authors' Association.

Miss Louise Sillcox, New York, Secretary, Authors' League of America.

Col. A. T. Thompson, Ottawa, Parliamentary Counsel for Canadian Pacific Railway Company.

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1931

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

WEDNESDAY, May 20, 1931.

Pursuant to adjournment, and notice, the Committee convened at 10.30 a.m. this day.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Ernst, Irvine and Rinfret.

Mr. Bury in the Chair.

Minutes of proceedings of meeting held on Tuesday, May 19, read and adopted.

Mr. E. Blake Robertson, Ottawa, representing various Fair and Exhibition Associations and Agricultural Societies, was called, sworn and examined.

Witness discharged.

Mr. Howard Angus Kennedy, Montreal, National Secretary, Canadian Authors' Association, was called, sworn and examined.

Documents tabled:

U. Copy of letter sent by witness in official capacity to various "religious, educational and fraternal leaders throughout Canada," with 57 post cards in reply thereto.

Witness discharged.

Mr. Bernard K. Sandwell, Montreal, Chairman, Copyright Committee, Canadian Authors' Association, was called, sworn and examined.

Documents tabled:

V. Special Report, British Parliamentary Committee on Musical Copyright Bill, July 3, 1930.

W. Memorandum of Canadian Authors' Association re Bill No. 4.

X. Brief re Bill No. 4, submitted by Publishers' Section of Toronto Board of Trade.

Witness discharged.

Committee adjourned until 4 p.m. this day.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

AFTERNOON SESSION

WEDNESDAY, May 20, 1931.

Pursuant to adjournment the Committee met at 4 p.m.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Ernst, Irvine and Rinfret.

Miss Louise Sillcox, New York, Secretary, Authors' League of America; Executive Secretary, Authors' Guild of America and Executive Secretary of the Dramatists' Guild of America, was called, sworn and examined.

Witness discharged.

Mr. R. H. Lee Martin, Winnipeg, Man., Managing Director and Secretary, the Musical Protective Society of Canada, was called, sworn and examined.

Documents tabled:

Y. Copy of Letters Patent incorporating "The Musical Protective Society of Canada."

Z. Booklet outlining objects and aims of The Musical Protective Society of Canada.

Witness discharged.

Col. Andrew T. Thompson, Parliamentary Counsel for the Canadian Pacific Railway, by leave of the Committee, read into the record a letter addressed by him to the Chairman of this Committee, which sets out the instructions to said Parliamentary Counsel of the General Solicitor of the Canadian Pacific Railway Co., with reference to Bill No. 4.

Mr. W. E. Guy, Ottawa, was called, sworn, but not examined.

Witness discharged.

Committee adjourned until Thursday, May 21, 1931, at 10.30.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

WEDNESDAY, May 20, 1931.

The Select Standing Committee on Bill No. 4, an Act to amend the Copyright Act, met at 10.30 o'clock a.m.

Mr. BURY (*Acting Chairman*):

The ACTING CHAIRMAN: We have a quorum, gentlemen, and we will proceed with the business of the Committee. The Secretary of State has been called to a meeting of council and may not be with us this morning, and he has asked me to take the chair in his absence.

Minutes of previous meeting read and approved.

The ACTING CHAIRMAN: Who is our first witness?

Mr. CHEVRIER: The suggestion was made that Mr. Kennedy and Mr. Sandwell will be with us this morning, but they are suggesting that they are not represented by counsel, and, if the Committee agrees, they would like to hear the evidence of others. They are willing to stay for a time. Mr. Robertson is here and he is willing to go on.

The ACTING CHAIRMAN: Were these two supposed to go on first?

Mr. CHEVRIER: Yes, that was the suggestion.

E. BLAKE ROBERTSON, called and sworn.

By the Acting Chairman:

Q. Please give your name and address.—A. My name is E. Blake Robertson, 305 Victoria Building, Ottawa. I appear before this Committee in connection with the request of the Fairs and Exhibition Associations of Canada that they be allowed to use, free of charge, at their fairs and exhibitions, music, copyright or otherwise, and I will submit in connection—

Hon. Mr. RINFRET: We are to expect you to give fair testimony.

The ACTING CHAIRMAN: You are dealing with section 11 mostly?

The WITNESS: Yes.

By Mr. Ernst:

Q. You want section 11 enlarged to include fairs and exhibitions?—A. Yes, that is right. There are roughly 800 exhibitions in Canada and they are all operated on a non-profit basis according to my instructions.

By Mr. Chevrier:

Q. In every centre?—A. According to my instructions, yes.

Q. Would that include the Ottawa Fair and the Toronto Exhibition?—A. Yes. My instructions are that since the exhibitions started, no dividends have been paid at any time to any shareholder in any exhibition in Canada, including Toronto Fair. Some, of course, come nearer balancing their budget than others; but that is my instruction, that there is no profit.

By Mr. Cowan:

Q. By exhibitions, do you mean ordinary agricultural fairs in the smaller towns?—A. Yes.

Mr. ERNST: You mean more than that.

WITNESS: Small and large.

Mr. ERNST: You take in the Canadian National Exhibition at Toronto as well as, say, the small agricultural fair at some little place like North Queens, in my constitutuency?—A. Certainly.

The ACTING CHAIRMAN: And there are over 800 of these?

The WITNESS: There are over 800 in Canada. When Mr. Nathan Burkan was giving his evidence, the day before yesterday, he mentioned that in the United States no charge was made by the American Society of Authors, Composers and Publishers for the music used by fairs in the United States. We think if they give their music gratis in the United States they should likewise give their music gratis in Canada.

Mr. CHEVRIER: That is, as soon as the United States do something that might be in your favour you want that kept, but if they do something that is in favour of somebody else—

The WITNESS: I did not say so. If they grant it in the United States, they should grant it likewise here.

Hon. Mr. RINFRET: Mr. Chevrier wants to establish that you cannot take the United States as an example for certain things, if you disprove of them on other grounds. I might even argue this—that in a country where the authors have a legal recourse to collect their fees, they may be more generous, and they may be likely to accept a proposition, such as Mr. Robertson makes this morning, about the fairs. If I know that the law protects me to the fullest extent on certain grounds, then I might say, " all right, I will give up the fair."

The WITNESS: That was a new argument.

Hon. Mr. RINFRET: I think it is quite correct for the witness to mention these things and later on we will argue the point.

Mr. ERNST: If the Committee desired to go part way with you, could you draw any line of demarcation between the different classes of fairs—any definite line of demarcation.

The WITNESS: The Federal Government and the provincial governments and the various municipalities issue grants to the fairs in the respective levels.

Mr. ERNST: Class A and Class B fairs, I believe they are called, are they not?

The WITNESS: Yes, they are, but I do not think that has any real bearing on the subject. These fairs are supported by public contributions, and, to a certain extent, by private contributions. They are not profit-making exhibitions. If they were run for profit, or on behalf of a profit paid to the shareholders, it would be a different thing.

By Mr. Chevrier:

Q. How do you bring the fairs in under this section?

The ACTING CHAIRMAN: He does not, he wants the section enlarged. He wants the amendment amended so as to take fairs in.

Hon. Mr. RINFRET: I understood you to say that in the United States, fairs were included. That is to say, there is no prohibition of performers' works at fairs. Can you give us more detail on that fact?

The WITNESS: When Mr. Nathan Burkan, who is general counsel for the American Council of Authors, Publishers—

Hon. Mr. RINFRET: Could you, for instance, give us the text of the section in the American law which covers that?

The ACTING CHAIRMAN: Is that a provision of the American Statute, or is it a voluntary concession by the authors' society itself?

The WITNESS: At the present time, it is a voluntary concession, but, on February 28, an amendment was introduced to the Copyright bill, which bill did not pass in the American Congress.

Mr. GHEVRIER: It is not sanctioned yet.

The WITNESS: It was not sanctioned?

The ACTING CHAIRMAN: Congress adjourned before the Bill was passed.

The WITNESS: They did introduce a section making musical fairs free.

The ACTING CHAIRMAN: But that Bill is not yet a statute of the United States.

Mr. ERNST: It is just as the Chairman said the other day, it passed the House of Representatives and was up for its final reading, I understand, and was eliminated by the question of time only.

The WITNESS: It passed as much as anything else passed.

The ACTING CHAIRMAN: The legislatures approved of them, in point of fact, but it was ruled out, just as Mr. Ernst says, by the question of time.

The WITNESS: Well, as a matter of practice, they have given to all fairs free music.

By Hon. Mr. Rinfret:

Q. You mean by statute.—A. No, not by statute.

By the Acting Chairman:

Q. As a matter of practice, the Performing Rights people give to fairs in the United States.—A. The American Society of Authors, Composers and Publishers.

By Hon. Mr. Rinfret:

Q. If it was not given by statute, then, by what authority was it given?—A. They own it and they give it.

Q. But practice cannot be established in that way.

By Mr. Irvine:

Q. Would it not be better, Mr. Robertson, for the fairs to make application to the Performing Rights Society of Canada for that, gratis?—A. My instructions are that in the applications to the American Society of Authors, Composers and Publishers, the answers they received showed that the giving away of rights rested with the Canadian Performing Right Society.

By the Acting Chairman:

Q. In other words, they will not give.—A. They will not give.

By Mr. Chevrier:

Q. Well, do you object to the fact that a man should give the use of his property without due remuneration?—A. The whole right, Mr. Chevrier, in connection with copyright, rests in the statutory enactment, and it may be limited. It is limited in other respects.

Q. Have you got to go by statute? This is a statutory enactment and it can be limited, but if you keep on encroaching by statute on the little that you are giving, then there will be nothing left.—A. Before that time comes Parliament will stop it.

The Acting Chairman: It is not an objection to the principle of limiting. It is a question of how far your principle should be applied, and Mr. Chevrier thinks that the principle would be pushed too far, if it was extended to fairs. He is not quarreling with the principle that copyright is the creation of statute, and that the statute, or the Parliament that created the right, has a right to put a limitation upon it. He does not quarrel with that, but he simply says, or suggests, that it is going too far, when you limit it to the extent of giving it to fairs.

The Witness: My contention is that it is not going too far, when you give the right to non-profit organizations—

By Mr. Chevrier:

Q. 800 you said were non-profit organizations.—A. I said my instructions were—

Q. Keep to your instructions. You said a moment ago that there were 800 fairs in Canada all of whom were non-profit making, and now you say that this statutory privilege ought to be extended to all of the fairs that were non-profit making. You started out by saying that there were 800 non-profit making fairs.—A. My instructions are there have been no dividends paid on fairs operating from the Atlantic to the Pacific.

By Hon. Mr. Rinfret:

Q. Do those fairs pay for something else.—A. Sure. They pay the charwomen—

Q. And they pay for different things that they use.—A. As Mr. Cahan said yesterday—

Q. Do they not pay for the instruments that the musicians use? What is the difference between all those commodities and the performing rights.—A. Well, Mr. Rinfret, you give the monopoly to a man who writes a piece of music.

By Mr. Chevrier:

Q. You mean his copyright.—A. Property. But in giving him that, and in surrounding his rights by statutory enactments, you are perfectly within your jurisdiction in limiting the extent.

The Acting Chairman: As I understand Mr. Robertson's answer to your question—and it is a pertinent question—you say that fairs pay their bands, they pay their charwomen, and they pay all the people that are working on the staff at fairs—the gate keepers, ticket collectors, and so on and so on—and the artists, the troupes that come and perform for the people, they pay all them; and why should not they pay for the music that is put on belonging to, or rather the rights of which belong to, the Performing Right Society? His answer to that is this, and I think that we ought to recognize whatever force there is in it: charwomen have no statutory right; troupes performing there have no statutory right; ticket collectors and the whole staff have no statutory right. The Performing Right people go on to the fair ground under the protection of certain statutory right, copyright or performing right granted by statute, and therefore, he suggests, they are not quite in the same category as your charwomen. Is that right, Mr. Robertson?

The Witness: That is my contention.

Hon. Mr. Rinfret: These institutions are not profit-making institutions. My answer to that is that, although they make no profit, they pay for quite a number of things, and the real fact that they make no profit is no argument why they should not pay for the rights. The same argument would apply to theatres, or any other institution using the rights. I do say that the argument that these institutions are not making profit is no argument at all against their paying for the performing right, because they are meeting other expenditures.

The Acting Chairman: That is right, but I was only pointing out the fact that you asked him the question, namely, what is the difference between the charwomen and the Performing Right Society, and the obvious answer, which he gave, is that the charwoman is not the creation of statute, while the Performing Rights Societies are. All I am suggesting is that we, as members of the Committee, have to take that into account for whatever it is worth.

Hon. Mr. Rinfret: I admit that, but the fact that these fairs, or fraternal societies, or whatever they are, are not making a profit, is no argument, because they are making other expenditures, and yet they are asking these rights for nothing.

The Witness: They do not make a profit. If they lost they would cease operation.

Hon. Mr. Rinfret: But even if a theatre owner does not make a profit, it has to pay for the performing rights.

By Mr. Ernst:

Q. Mr. Robertson, is not there really a fundamental difference, not whether the exhibition makes a profit or not, but whether its objet is to make a profit? If you can give us a list of those exhibitions in Canada which do not aim to make or pay dividends, then I would be much more sympathetic.—A. My instructions are that no exhibition from the Atlantic to the Pacific has ever made a profit, and, repeatedly, they have had to dip down into their shareholders' pockets, and go to people like yourself, and Mr. Bury and Mr. Rinfret to make up the deficit.

Q. I, unfortunately, have invested in shares in companies which have never paid a dividend, or which have never made a dividend, but their object was to make a dividend. You said there were 800 exhibitions. There must be a great deal of difference in their constitution, and, if we could be supplied with that information, it might be helpful in considering the problem, that is, those who aim to make a profit and those who are more or less for the co-operative benefit of the community.—A. All of the large exhibitions are joint stock institutions. They issue shares. Mr. Bury, you are more familiar with it than I am. I think you are a shareholder in one.

The Acting Chairman:

I had one share in one exhibition association in Edmonton.

The Witness: Did you ever receive a dividend?

The Acting Chairman:

Oh, no. I never expected to.

The Witness: That is my contention.

The Acting Chairman:

Q. But Mr. Ernst's question is this, can you tell the Committee whether or not, among the 800 odd fairs in Canada, there are any that are formed for the purpose of making profit for the shareholder?—A. My instructions are there are none. What they do is to increase their prizes, or decrease their entrance fees. What they want to do is to break even.

By Mr. Chevrier:

Q. Just in order to get along a little faster, you know about the Performing Right Society, you know that the rights are vested in them?—A. Yes.

Q. Now, why cannot these associations go to the Performing Rights Society and ask them for the use of the music, and supposing that the Performing Right Society says, "here is a fair, a small fair, away out in this county, we will not

charge it anything," but if they say, "here is the Toronto fair, the Ottawa fair, the Hamilton fair, or other large fairs, where they spend a lot of money," what is the objection to the Performing Right Society who bargain with you charging a fee in those latter instances.—A. The evidence given was, or the evidence so far, divulges the fact, that 50 per cent of the receipts that go to the Canadian Performing Right Society go to the United States and 50 per cent goes to England. Nothing goes to Canada.

Mr. ERNST: But, if the man who composes that music resides in England, or the United States, why should the question of his nationality affect the matter of his being paid for his right?

The Acting Chairman:

It does not matter where the money goes. The question is whether they should be debarred from their rights to charge or not.

The WITNESS: Mr. Gene Buck appeared before this Committee, and he gave a very apt illustration. He says that Parliament does not legislate regarding this chair, a manufacturer makes it and sells it. Now, I don't know, possibly an industrial registration rests upon this chair. If it does, it will last for five years, and the initial registration can be renewed, for five years only, and, at the end of ten years, it falls into the public domain. Mr. Gene Buck also referred to patents.

By Mr. Chevrier:

Q. Well, what is your conclusion?—A. Well, I am not disputing the advisability—

Q. How much percentage of music is used at those fairs?—A. My instructions are it is very largely American.

Q. How much is music? What is the percentage of music in the program at the fairs? Did you ever go to a fair where you did not start with music, in the morning, and end with music, at night—without a stop throughout the day?—A. It is continuous, yes.

Q. Then what percentage of the whole performance is music?—A. I do not know.

Q. Is not music the main attraction? If you had no music you would not have a fair.

By Mr. Irvine:

Q. I would like to ask the witness, or counsel, on what grounds the exhibition companies, or fairs, whichever one chooses to call them, ask Parliament to prevent the Performing Right Society from charging? What are the grounds upon which they expect this legislation?—A. Mr. Irvine, by your vote or by the vote of your predecessors, rights were granted to the Performing Right Society to collect something which they could not have collected otherwise than by your vote and other votes.

Q. Yes.—A. In Wetaskiwin, you have a fair. The chances are, in that case, the band is not paid. The chances are it operates free.

Q. Go ahead, Mr. Robertson, I think you are right.—A. Supposing they give their services free, would it not be a just action on the part of Parliament, granting a monopoly as they do to those people who produce the product of their brain, to say, we will accept, or we will set apart the fairs, and the fairs shall have them free. Now, Parliament has done it already. Many countries have done it already. The English parliament has done it. If you will turn to section 17 of the Canadian Act, which corresponds to a section in the English Act, you will find that in connection with text books I can get out an educational text book and I can take one extract from each author and put it in my text book without charge. Should I be an elocutionist I could go and give one

extract from twenty different works, and I could go and recite "Gunga Din" without any charge, according to the English Act, the Australian, New Zealand and Canadian Acts.

By Mr. Chevrier:

Q. That is all very fine, Mr. Robertson, but that is only an extract from that book. However, when you come to a fair, and you have music, which is a considerable part of the program, how do you compare it with an extract from a book?—A. It is an extract from the repertoire of any publisher.

Q. No, it is an extract—you have the right under the law to use an extract for the purpose of putting it into a book, for educational purposes, and that is a very good principle indeed; but, when you take music, and you place that music in a program for the day, or for the week, then it ceases to bear the same proportion to the program of the fair as the extract bears to the book that you are writing.—A. If I play one selection from Gilbert and Sullivan Operas, and one selection from a dozen others, and if I stand up in the theatre and recite one piece from each one of twenty or thirty authors in Canada or any other country—

Mr. IRVINE: There will be a charge of the audience against you if you did that. Well, Mr. Robertson, if I understand you then, the basis upon which you ask that in clause 11 the rights of fairs to use music gratis may be provided for is that the Performing Rights Society have statutory privileges which enable them to collect, and in return for that they should give this gratis. Now, is it not so that we have already, in the same statute, made it possible for the Governor in Council to safeguard the public from any extra charges which might possibly be put on by this Performing Right Society, so that the public has been safeguarded against any extra charge.

The ACTING CHAIRMAN: That is, assuming that that section passes.

Mr. IRVINE: Yes. Then the statutory right is to allow them to collect. Then you suggest, in section 11, that we should prevent them from collecting.

The WITNESS: Right.

By Mr. Irvine:

Q. That is, taking back the thing that we have already given them, insofar as fairs are concerned.—A. Right.

Q. I cannot see why we should do that. The C.P.R. has statutory rights in this country, and I expect that every bull and cow that goes into a fair pays the rates.—A. Mr. Irvine, they can no longer charge what the traffic will bear. Originally they charged what the traffic would bear, but now the Railway Commission regulates the rates.

Mr. CHEVRIER: That is a public utility corporation. That is a different proposition altogether. You can take the music or leave it.

By Hon. Mr. Rinfret:

Q. By the way, Mr. Robertson, the argument seems to have gone this way, that section 11 deals with the Performing Right Society, but, as it reads in the Bill, it does not make any distinction. Would you be in favour of inserting section 11, making it apply only to music controlled by certain Performing Right Societies.—A. My idea, personally, is that section 11 is not well drawn. Section 11, being as it is—an amendment to section 17 of the Copyright Act—I think we should start out with purporting to amend section 17.

The ACTING CHAIRMAN: That is the form of the Act, and all of these sections are wrong; 10, 11 and 12 are all wrong in that respect. That has not been overlooked. The main point is the essence of the thing.

The WITNESS: Well, the essence of my request is that there should be free music for agricultural fairs,—agricultural, horticultural and livestock exhibitions.

By Mr. Chevrier:

Q. That would not apply, then, to the 800 with which you started off?—A. Yes, it would; to about 800, yes. There are not many livestock exhibitions. 808 is the exact number of all.

Q. I have a certain amount of sympathy for what you say, but I would like to get the exact number. Now, you limit that. First of all, you started off by saying there were 800 fairs. Do you mean 800 agricultural fairs, or fairs of all kinds?—A. 808 is my information; agricultural fairs, and a slightly larger number, when you include horticultural and livestock exhibitions.

Q. Undoubtedly there must be some that are just very small ones, in very small communities. Now, starting from that again, surely there ought to be some distinction between the large exhibitions and the small fairs.—A. Well, there would be the Canadian National Exhibition and and the Wetaskewin Exhibition.

Q. Well, that would be a very small fair. I am not casting any reflection upon any of them.—A. It is the principle.

Q. There may be a lot of merit in what you say as to the smaller fairs, and if you can convince me on that, I am open to be convinced. But I am not yet convinced, and I still say that there must, surely, be some distinction between the large exhibitions and the small fairs.—A. Well, of the larger fairs there is the Central Canada and the Canadian National.

Q. Why should not they pay?—A. Well, they have never declared a dividend.

By Mr. Ernst:

Q. Supposing they put the money back into plant?—A. They do that, and larger prizes, and so on. They are educational institutions.

The ACTING CHAIRMAN: The point Mr. Robertson makes is: even if they put their money back into plant, and give bigger prizes, it is all a public service. If they are agricultural fairs, it is a service to agriculture, a service to livestock, and a service to the country in general. That is the whole essence of the argument.

By Mr. Irvine:

Q. Since it is necessary to have music, and since they are having to absorb their profits in larger prizes, would it not be wise to let some of their profits go to the music producers?—A. Don't you think the prizes are small enough now, Mr. Irvine. They find it difficult enough to operate the fairs as it is.

Q. Yes, but my point is that a music producer is an asset, or his music is an asset—perhaps as great an asset to the nation as anybody who is getting prizes from the fairs.—A. I know, but he has no rights, except the rights you grant to him.

Q. But we must not take the right away from him that we grant to him.—A. To all intents and purposes an exhibition is a state affair.

By Mr. Ernst:

Q. It seems to me that there is some merit in the contention, but I am not convinced that the larger fairs ought to be exempted. Could not we draw some distinction, on the basis of attendance, that is, fairs having an attendance under a certain specified figure to get their music free. That would protect the smaller country fairs.—A. The real desire of all fairs, the real desire of the public, the real desire of the government, is to have the attendances as large

as possible so that the educational facilities presented at those fairs shall be as wide-spread as possible, and I would be very loath to see the attendance limited, in order to escape some possible charge.

Q. I do not suggest limiting the attendance, but I suggest that, possibly, some line of demarcation might be made by attendance.

Mr. CHEVRIER: These fairs are supported federally, provincially and municipally. I think it is a very reasonable thing to say that we should limit this right to the extent that they could give free for all classes.

By Mr. Irvine:

Q. I was just going to ask Mr. Robertson if he thought that some of our larger fairs in Canada would not be well advised to offer a very substantial prize each year for the best Canadian musical composition?—A. I cannot answer that. It has not been done.

Q. I mean, if they are going to expect to get the music free it would be reasonable to expect a recognition of that sort.—A. The same class of people who support the fairs have made the same kind of offers for musical, literary and dramatic works.

By the Acting Chairman:

Q. Have you any idea of how much music would be used, say, in any of the fairs that you know of, in any of the larger fairs, how much music would be used and what would be the fee, the normal fee to expect from a fair?—A. Mr. Bury, it is so wide.

By Mr. Chevrier:

Q. Did you ever make a demand for permission to play music at one of the large fairs?—A. I have asked for a number of suggestions.

Q. What answer did you get?—A. Nothing doing.

Q. Why.—A. It will be—

Q. How much were you asked?—A. I had in mind 150 pieces.

Q. What fair was that?—A. The whole catalogue.

Q. What fair was that for?—A. It was not for a fair.

Q. At any time that you had to do with a fair did you on any occasion have anything to do with a fair, and did you go to the Performing Right Society and ask them to use their music; did you ever do that?—A. I have had no connection with fairs outside of—

Q. Did you ever do that?—A. —being a moderate shareholder in a fair.

Q. If you will not answer the question it may recoil to your disadvantage. I am asking you if you ever, on behalf of some fair, went to the Performing Right Society and asked for the right to use some of their music?—A. Mr. Chevrier, my conection with fairs is that I am a shareholder.

Mr. CHEVRIER: We are not concerned with that.—A. I am an attendant; I am interested from an educational standpoint in fairs. The fair people came to me and said they were too poor to come here and sit around for four or five weeks—that is what they said, four or five weeks—following this Copyright Committee, and they said, "Will you look after our interests?" I said, "I am not very conversant with fairs, but I will do the best I can for you."

Q. Why didn't you send somebody who did? I ask you this question: Do you know of any circumstance, or of any occasion, when you yourself, or anybody on your behalf, or on the behalf of any fair, went to the Performing Right Society and asked them for the use of free music; do you know of any occasion of that kind? Say, "yes," or "no." If you say "no", that you do not know, I am through.—A. Each year, I am instructed, the Canadian National

Exhibition addresses letters to Mr. Jamieson asking, in pointed language, "what numbers do you control, so that we will know what we may, or may not, use without infringing on your repertoire."

Q. There was an answer. What was the answer, do you know?—A. I am instructed that the answer is they will not furnish a list of their repertoire.

By the Acting Chairman:

Q. Were they ever asked, to your knowledge, whether they would allow any of their works to be performed free at the fairs, or any fairs?—A. I am instructed that Mr. Woodhouse—I think it was Mr. Woodhouse, or some other official of the Performing Right Society, in Regina, possibly five years ago—about five years ago—at a meeting, made a very pointed statement that the rights of the society—

Mr. CHEVRIER: I want to give the witness all the latitude possible, but he is under oath, and he says he is instructed.

Mr. ERNST: It is only worth that much.

The ACTING CHAIRMAN: He is telling the truth.

Mr. CHEVRIER: I am not challenging that. On the first day, Mr. Bury, the Chairman ruled that there was going to be personal knowledge of any evidence given by witnesses. The Chairman made a ruling, and quite properly so, that the evidence that we were to hear here was to be evidence that was within the absolute knowledge of the witnesses. Now, let us restrict ourselves to that.—A. My evidence is there are are roughly 808 agricultural exhibitions in Canada and they wish free music.

Q. That is hardly on the point.

By the Acting Chairman:

Q. Can you give us, of your own knowledge, an answer to the question whether the fairs, or any of them, have ever approached the Performing Right Society with a request to be allowed to use their works, or some of them, free? Do you know of your own knowledge whether that has ever happened?—A. I know they have been approached, and you know—

Q. I do not know.—A. Excuse me.

Q. That is what I want to find out.—A. The city of Edmonton, according to my instructions—

Mr. ERNST: That is all hearsay.

Mr. CHEVRIER: We will take it, subject to that objection.

The WITNESS: Naturally, I cannot speak for each individual fair. I say, according to my instructions, Mr. Bury, that the City of Edmonton asked the American Society of Authors, Composers and Publishers if it might use their repertoire at Edmonton fair. The answer was that the matter rested entirely with the Canadian Performing Right Society.

By the Acting Chairman:

Q. Was an application then made to the Canadian Performing Right Society, to which they had been referred?—A. In a public speech Mr. Woodhouse, or some other official of the Canadian Performing Right Society, stated, in Regina—

Q. Let me interrupt. Are there any representatives of the Canadian Performing Right Society here?

Mr. JAMIESON: Yes.

The ACTING CHAIRMAN: Well, we should get evidence from them.—A. Mr. Woodhouse stated in Regina—

Q. You know, unless it is your own knowledge, you need not give it.—A. That any exhibition that used their music was subject to a licensing fee or to criminal prosecution, for failing to pay that fee. The then Minister of Agriculture came back to Ottawa, and he submitted the question to the Department of Justice. The Department of Justice stated, I am told, and I think somebody moved for the production of papers, that the exhibition might use music without paying the fee. Most of the fairs with whom I am connected have been advised by their solicitors that such opinion of the Justice Department is not sound. I am quite free to admit in my opinion it is not sound.

By the Acting Chairman:

Q. Have you anything more to say in support of the suggestion that you made?—A. The only thing I have to say is that I would request the Committee to amend the bill so as to provide for free music for agricultural, horticultural, live stock exhibitions and fairs.

By Mr. Irvine:

Q. May I ask you, Mr. Robertson, before you go away, you do not think that section 11 provides for that now?—A. In my opinion, no.

Mr. CHEVRIER: That is a question of law.—A. It is largely, yes.

The ACTING CHAIRMAN: Mr. Robertson would not be in a position to say that. Are there any other questions?

By Mr. Chevrier:

Q. Mr. Robertson, are you responsible for those circulars that have been sent around, on behalf of the Canadian exhibitions; is this one of your circulars?—A. It is. When I was asked by the larger fairs to deal with the question, I wrote a letter to each fair asking for an opinion, if it was a fair demand to make upon parliament. I have not received replies yet other than it was a fair demand, in their opinion.

Q. I have demands, as a result of that circular to kill the bill.—A. Well, you know, copyright is a pretty complicated question and some people might misunderstand it. As the Copyright Act stands, it might mean a fair is quite safe in performing music in any repertoire, because there is no jurisdiction that would enable them to take Canadian—

Hon. Mr. RINFRET: I suppose you are doing your best to clarify this complication? That is why you sent circulars around?—A. Naturally.

Q. What is the exact amendment that you suggest to section 11 in this amended bill. How do you think the bill should be amended to express your wishes?

The ACTING CHAIRMAN: He has answered that. He says "Agricultural, horticultural and live stock fairs."

By Hon. Mr. Rinfret:

Q. Are you sure that will cover everything you have in mind?—A. If I get that I will be satisfied.

Witness retired.

Hon. Mr. CAHAN resumed the chair.

The CHAIRMAN: Who is the next witness?

HOWARD ANGUS KENNEDY, called and sworn.

The CHAIRMAN: Q. Will you please give your name and address?—A. Howard Angus Kennedy, Montreal, secretary of the—

Q. Speak loudly so we all can hear you.—A. You want my occupation?

Q. I am not particular. You appear as secretary of some Association.—A. I was going to say I appear both as a writer and as a farmer. You can put that down, it is quite true. At the present time, not having to depend on my farm, I hope, I am National Secretary of the Canadian Author's Association, an association which, I suppose I should explain, consists of 850 members, in 12 branches, from Nova Scotia to British Columbia—besides an entirely French section in the Province of Quebec.

The Association was formed ten years ago, largely to promote and to obtain a just Copyright Act for the Dominion, although for other purposes also. Speaking for myself, just as a joke, when I said I was a farmer, I am a farmer in Mr. Irvine's constituency of Wetaskiwin, and not altogether independent of agriculture either. But I am also an author. I have been writing very largely for the benefit of Canada. I do not claim remuneration or particular credit for that, but, for the last fifty years, and it is just fifty years last week since I became a writer in Canada—I have devoted myself very largely to Canadian subjects and also, very largely, to the spreading of knowledge and appreciation of Canada in other countries, especially in the Old Country, Great Britain and Ireland.

Q. Now, would you please proceed with the bill?—A. Yes sir. I wanted to thank you, on our behalf, for the attitude which you have taken in opening the proceedings, showing that you are not unwilling to consider modifications of this bill; otherwise, of course, it would be useless for us to come here. It would be relevent, I think, to point out the many defects in the bill, defects of omission as well as commission.

Q. We prefer not to go into the omissions now; they will undoubtedly come before another committee, at another time.—A. Yes, sir. It is simply the part of dealing with the matter of copyright, and we have been content to accept the bill in that sense, although we yearly protest against the failure of Parliament to give us better legislation in points that are not concerned in this bill. We avoided any protest on this occasion, because we are as anxious as the Chairman is to get speed in this matter and to get this bill put through, bringing us thoroughly and entirely into the Rome convention. We are chiefly concerned in getting our country into the Rome convention in spirit as well as in letter; and it is one of our objections to the present bill that we think that even if it gets within the Rome convention as a matter of law, it certainly contravenes the spirit; whether it contravenes the letter is evidently one of the questions which is difficult to decide, and which you or somebody will presently find means of deciding. It has been suggested to the President of our Association by, I am afraid I must say it, a bribe to procure our refraining from opposition to certain sections.

Q. What is that, a "bribe"?—A. A bribe to procure.

Q. Are you using the word "b-r-i-b-e"?—A. I am using the word "b-r-i-b-e," to procure our cessation of opposition, shall I say, so that provision might be made to tax outside authors and composers. Discussion is almost entirely on the question of musical opposition. I merely mention that matter. Of course, we have not even replied to such a suggestion. It is most dishonourable. I would consider it, as an author, most dishonourable.

By the Chairman:

Q. Who made that suggestion?—A. I refer to Col. Cooper's recent letter to Dr. Lighthall, the president of the association.

Q. Do not bring in private correspondence in this matter.—It was addressed to the President.

Q. We are dealing now, before this Committee, Mr. Kennedy, with certain sections of the act, so please leave out any reference to your private correspondence or private works.—A. If you consider it private I will leave it out, and I will say no more about it.

I should say that it seems to me, Sir, that the amendments to the bill, especially sections 10, and 11 that have been spoken so much about, would allow those who have no respect for the Berne convention, as you have, Sir, and do not care one snap about it, to drive a coach and four through it. That, we are deeply concerned with preventing, but we are also concerned with other things—we are local people; we are Canadian people—I have got a book here, one of my books to which a sequel has just been written—I have just got the plates. It is a book of stories. I have been asked to turn some of those stories into musical plays for children. I will at once come under two of the sections of this bill. I would be practically compelled, if I did so and wanted to get anything out of it, to put my interests in the hands of the Performing Right Society, Mr. Thompson's new Society, or our own Association, which might quite conceivably branch out into those lines and take the interests of those musical numbers in charge, and would immediately be one of the associations against which your section 10 is aimed. Mr. B. K. Sandwell, who will be our principal witness, is here at present and will go more into that question, and into any other questions about which you desire to ask in detail. But our Association, in that case, and the Performing Right Society, in the present case, if not a monopoly—and the word is inaptly used—is almost a monopoly, for they control nine-tenths of the modern popular music, and are a monopoly, so far as that is concerned. We also would become a monopoly, and then the question comes up whether Parliament should indulge in price fixing in the case of a monopoly. Reference was made by you, Sir, as Chairman yesterday, and incidentally, to railways, doctors, and lawyers. I take it that the difference between a railway company, with its special privileges, and so on, and ourselves, or an association like the Performing Right Society, is sufficiently obvious, but doctors and lawyers—was it suggested that authors are limited in their fees?

The CHAIRMAN: I did not suggest lawyers; I did not suggest doctors.

The WITNESS: You referred to doctors, Sir.

The CHAIRMAN: Did I refer to doctors?—A. You mentioned doctors and lawyers, and I wondered in what connection. But, Sir, it is a part of my statement that doctors who may be subject to limitations of one kind or another; lawyers, I suppose, you would say, are subject to limitations in the matter of fees for certain cases and for certain services; but, supposing they are, they are monopolies obviously. I do not need to go into the bill to say that a doctor is essential and that, along with lawyers, they are a circle of people who constitute a monopoly and nobody outside of that circle can come in and practise.

Then, we have an actual monopoly in the shape of the organization which a previous witness has represented—my friend, Col. Cooper, if he will not refuse the title of friend in what I have said. He controls, or that association controls, ninety-nine per cent of the theatres in Canada. You can hardly—

Q. I think he was disinclined to admit that he controlled them.—A. I would not say that he controls them, but I would say his Association controls them.

Mr. ERNST: I think it is ninety-nine per cent of the film distribution in Canada.

The WITNESS: I think the authors, or a very large proportion, we will say—

Col. COOPER: It is about as accurate as an author usually gets.

The WITNESS: We hear of independent theatres, but even in the independent theatres, there may be representations when there is a question of getting something for nothing, or getting something for as little as possible.

The CHAIRMAN: We can all be roped into a situation of that kind.

The WITNESS: I am giving an example of people who refuse to be roped in, Mr. Chairman, a little later on. But at any rate theatre people have been trying to come under that heading, and the exhibition people as well.

Q. Please do not be too discursive, because our time is limited. We have many more activities.—A. Do you think, sir, that what I am saying is irrevelant?

Q. No.—A. I am pointing out to you the situation, in general terms, as we have no counsel, expecting that Prof. Sandwell will go into the details, if you will allow him. We are to be subject to price fixing, and we ask why we should be discriminated against, and why should you not subject to price fixing your butcher, baker or candlestick maker, your theatre, your dealer, everybody?

I spoke of myself as a farmer. I am interested in wheat. The question of price-fixing is constantly coming up in relation to wheat. You had the fixing of price during the war to a maximum beyond which we should not go.

Q. Mr. Kennedy, that has no connection with us. We have heard discussion about that day after day and day after day. Confine yourself to such matters as will give the committee some new information in the matter beyond that which has been submitted by other people.—A. I might not give the information by putting the question, I suppose, but I will put the question. I have already put it. Why fasten upon us—and I would put another question—who is it that asks this discrimination against us?

Q. Rhetorical questions are always in order, but never answered.—A. They have been practically answered, you know, by the ownership of those theatres, which compose the monopoly and for whose benefit this has been asked.

Q. I wish to state distinctly, upon my word of honour, that no such request was ever made to me, and no representations of that kind were made to me, in respect of this bill. It has been drafted at the request of no individual or no Association or no Company.—A. I have been impertinent enough, sir, to ask you, but if nobody has asked you for this legislation, the people who have asked for it, and who have been working for it, and who are asking for it now, are those people of whom a number is supposed to be authors.

Q. That is a matter of opinion.—A. It is a matter of opinion, naturally. Now section 10 is extremely objectionable and it is a section, as you see, difficult to object to on account of our sympathy necessarily with the objects of the institution which you deal with there; but I do want to say, and you must allow me to put that much of argument into my statement, that all the analogies are very strongly against us granting any such discriminating privilege. If I have a farm, as I have, and a tramp comes to my door, a hungry tramp, I can feed him, and I probably will, am I to be compelled by law to feed him? That is what you are doing now, in the case of the churches, which are supposed to be in need of money. It comes to me and, if I choose, I can give it the money as a gift. Now, you propose by this bill to declare that I must make the gift. Talk about forced loans of the old times! This is a forced gift, and we object most strongly to it, Sir. I think that is all I need say, Sir, but I should like to ask who has asked for this special privilege. You are speaking, Sir, most pathetically of that little village community hall—

Q. Well, I shall tell you, if you want to know. With a few exceptions, I think the members who represent agricultural districts have suggested some such amendment, and a number of letters have been received from time to time by the State Department, before my day,—and since I came here,—to which I have had access, suggesting that. There is no particular party to whom you can impute the origin of that section.—A. I am not going to ask any inquiries into the origin of the section, but I know we have—

Q. The origin does not affect it at all. The origin of this section is the Secretary of State and his Department, so far as you are concerned.—A. Yes; and it is a relevant question, who supports this thing? This demand having been originated by churches, fraternal and educational institutions—

Q. You are here to give evidence, and you are not to cross examine this Committee. If you will restrict your questions to rhetorical questions to which you may expect no answers, well and good.—A. You misunderstand me, Sir, if you will excuse me for saying so. It was necessary for us to discover who it was wanted this change. We took means—we sent out a letter a few weeks ago to 300 of the leading leaders in the churches, to all the churches and educational institutions, and so on, in this country. We are continuing to get replies.

By the Chairman:

Q. Do you think that affects the merits of this bill? Will you please confine yourself to your objection to this bill, and any vidence which you wish to adduce against the section, or by way of suggestion and modifications thereto?—A. We suggest that it should be cancelled, and we ask that you will cancel it. I state not only that we as an Association object to it, but that it is strongly objected to. I have already got sixty-two leading bishops and clergy—

Q. If you have any such evidence to adduce we will accept it, but such statements as those, as evidence, are oral on your part; we should have the correspondence.—A. I will give the writings. I enclosed a post card in every case and I have the post cards in my bag. I have kept out several of them, and I am willing to submit the original documents.

Q. If you will submit them, we will accept them.—A. One of them, the Bishop of Pembroke, considers it "most unjust", and the Superintendent of the University Hospital at Edmonton says he considers it "simply highway robbery".

Q. Will you please submit these?—A. I will, Sir, later on; but these gentlemen having said all that, it is quite unnecessary for me to say another word.

Q. Before you discuss what they have said, please submit the documents; they will speak for themselves.—A. I will, Sir.

By Mr. Cowan:

Q. Did you say you wanted Section 11 deleted from the bill altogether?—A. That is my suggestion, sir. A reference was made to this being a copyright—an American section. I made special inquiry about that, and I am informed—you can check me up on it with the section—the bill as it was presented to Congress, though it included that special provision—but, of course I know the position in the United States. The poor people have been fighting for a decent Copyright Act for years. They had to tolerate many features, and one of these was the special privilege to these institutions, and they are charging no fees for admission.

The CHAIRMAN: We will be able to place that section. We have the whole proceedings that you have referred to. It is true that this section is the American section, in a slightly modified form.

The WITNESS: First, I thought it was necessary—

By Mr. Ernst:

Q. Putting it briefly, your objections to the bill are two: first, against price fixing, and, secondly, against Section 11?—A. Yes.

Q. Have you anything to say on the subject of legislation?—A. I understood that that was settled so far as the bill is concerned.

By Mr. Bury:

Q. It does not affect copyright holders?—A. Registration is cut out. That is one of the things we are thankful for.

By Mr. Ernst:

Q. As I understand it, you are convinced that the authors will have to associate in some form of combination, in order to protect their rights?—A. Certainly. The authors have felt the necessity and have associated, and we are the Association. As I have said, if I produce, as I intend to produce, a musical play from any of my stories, I will be bound to go into some such Association which will come under Section 10.

Q. You mean it will be necessary for you to assign performing rights to some society?—A. Yes.

By Mr. Bury:

Q. You represent the comparatively newly formed Canadian Authors' and Composers' Association?—A. No, the Canadian Authors' Association, formed in 1921.

Q. They are two distinct associations?—A. The other was formed before us and lapsed into inactivity, and has been recently revived.

By Mr. Irvine:

Q. I understand from your statement that the authors are not entirely satisfied with the bill, and you have mentioned sections 10 and 11. Would you care to say whether or not you think the bill, even with sections 10 and 11 as they are, is a considerable improvement to the position authors in this country previously had?—A. It would involve such a difficult calculation that I should not be prepared to say. Mr. Sandwell will have information on this.

By Mr. Ernst:

Q. Have you any information to offer—to give on the question of the copyrighting of titles?—A. Evidence as to fact? I am not allowed to give opinions, but I would make no demand for copyrights in titles. I am thinking now mostly of printed books. I understand that there is no copyright in titles, either here or in the old country, is that not so?

Mr. Bury: The title is included.

Mr. Chevrier: As a matter of information, Mr. Kennedy—tell me whether I am right or not—I remember a case where a book had been written with a very fine title. The rights were sold and then the purchaser of the book immediately proceeded to turn that book into a moving picture, retaining the title and the name, but an altogether different theme, altogether foreign to what the book had been in the first place. Would you have any objection to your works being handled in that way?

The Witness: I say that is an outrage. Everybody knows it to be an outrage.

Mr. Ernst: Does not Section 5 protect the author against that?

Mr. Chevrier: That is mutilation, and the title is an integral part of the work, because you cannot publish a work unless you publish the title and the name. So that the title is absolutely copyrighted. Every portion of it is copyrighted. One of the vital things is the title itself.

The Witness: I was going to mention that. I want you to ask Mr. Sandwell about that when he takes the stand.

Mr. Chevrier: I cannot give evidence, but there is somebody else who can give evidence on that.

The Witness: Instances like this occur in regard to titles—

The Chairman: Would you please address yourself to section 2, subsection (*v*)?

Mr. BURY: That is the bill, not the Act.

The WITNESS: "'Work' shall include the title thereof, when such title has other than a general, geographical, descriptive or commonplace meaning."

By Mr. Bury:

Q. Have you any objection to that?—A. I have not studied the question, sir. I do not see any objection at the present moment.

Q. It makes the title part of the copyright.—A. I was going to give titles which have been objected, to, as not subject to right, but which have been more or less of a geographical nature. This is a book of my own published thirty-four years ago. It was called "The Story of Canada." Now, two years ago, a Toronto publisher got out a book under the same heading. As a matter of fact he apologized to me for so doing. He had known, but had forgotten, this book. But I did not claim, and I could not claim, that a title of that kind could be any monopoly of mine. But, as a matter of fact, no decent publisher would publish a book under a title that was already in use.

By Hon. Mr. Rinfret:

Q. If you are through with the subject of title, I would like to bring you back to section 11. That is the section about churches, colleges *et cetera*. I want to understand your stand properly. I surmise that you do not object to the fact that churches, colleges and other associations might be granted the free use of music, but the stand you take is that if they are going to have the free use of music the choice should be left to the composer himself, and that privilege should not be granted by statute?—A. Exactly. We have every desire, and every author, as far as I know, every composer, as well as performing musician, is in the habit of giving the use of his work, not as an actual performance—the performers give their actual performance to churches, charities and all that sort of thing. What I object to is being held down on the ground of having this dragged out of me by force of law.

Mr. BURY: Here is the trouble I see: Assume that one society is a single entity—has, in itself, all the performing rights. In that case a church is not dealing with an individual charitable minded single author or composed who says, "Certainly, I will be very glad to let the church use this." But the church is dealing with a society to whom, or to which, that author has passed on his rights, and he would have no right, no matter how charitably disposed he was, or how ecclesiastically minded he was, to say to a church, "You can do this free". It would lie with the Association.

Mr. CHEVRIER: I can see your difficulty. It could be arranged. The author could give directions. It is a matter of contract, and it might be a good thing, now that Mr. Bury has taken that view, that, whenever the author assigns certain rights of that kind, he stipulate that, for religious purposes, or educational purposes, they consent to this.

The WITNESS: That would be very interesting, and I, personally, would be glad to do it. It remains to be seen—

Mr. CHEVRIER: It is a matter of contract.

The WITNESS: —whether the Performing Right Society would accept any such limited assignment; and another point is that we were told—I think by Mr. Jamieson, the other day—that it is their practice not to charge.

Mr. BURY: It does not meet my point to say that it is a matter of contract, and that the Association may do it. That does not meet my point. We do not know whether the Association will do it or not. Where you are leaving it to the individual power of the author you know what fifty per cent or sixty per cent

or seventy per cent of the authors will do in respect of their works, but where you have divested yourself of all other authority over performing rights, that is a different matter. It is not all plain sailing.

By Mr. Irvine:

Q. Is not the church an organization, under the charter of this government, the same as the performing rights society, and is it not one society dealing with another? Let them scrap it out?—A. Allow me to point out, Sir, that it is "performance" that you are dealing with. Though nominally for religious, charitable or fraternal purposes and so on, they are also for the benefit and profit of the people that give these shows. It is quite common for a professional company to go to a church, or charity, and say, "Let us get up a show for you; you get the money. We will get the money for you and we will give you so much per cent." The thing is advertised, not for the benefit of these people who are going to profit financially, but it is advertised for the charity.

By the Chairman:

Q. If that were eliminated by apt words—if that sort of promotion of a charity for personal advantage or profit were eliminated by apt modification of this section your objection would be removed?—A. My objection would be partly, largely, removed—not my objection on principle, being forced to give what we are generally willing to give voluntarily. That is most dangerous. But you are not incapable, sir, of promoting such a modification as you suggest.

Q. This Committee will have to consider every suggestion?—A. I would certainly not back it up or not be willing to accept it unless it were perfectly clear that the contributor—that we as the contributors of our brains and of our music, or whatnot, were put on the same footing as the contributor of the actual song that you hear.

BERNARD K. SANDWELL, called and sworn.

By the Chairman:

Q. Give your name and address?—A. Bernard K. Sandwell, resident in Montreal, born in England but continuously resident in Canada for the last forty-two years. I am chairman of the Copyright Committee of the Canadian Authors' Association. I was one of the original founders of the Association and was its first secretary for several years.

Q. When was it founded, Mr. Sandwell?—A. Just before the enactment of the first Canadian Copyright Law, after 1921. It was founded, I think, in 1921 for the purposes of representing the interests of Canadian authors in legislative proceedings. I should explain, I think, that it is purely a professional Association; it does not engage in the business of dealing in copyright property of any kind. It is also a very poor Association. It lives on an annual fee of five dollars from each member. It has about 850 members, so that its annual revenue is not large. We have never had enough money to be able to engage the services of a remunerated lawyer. We haven't enough money to do so on this occasion. It is possible that for that reason, I may have to touch a little upon what might be considered legal points. I hope, if my law becomes too obviously foolish, Mr. Chairman, you will check me up.

THE CHAIRMAN: I have heard you argue legal questions before with efficiency.

THE WITNESS: At any rate, the Committee will not have to listen to any legal argument from any legal gentleman on our account, after we are through. We are also a parallel association to that which was represented here, at the last minute, yesterday, by Mr. Gordon Thomson. His association is, I think,

The Authors and Composers Association of Canada. It is exactly parallel to ours. Both Associations, by their constitution, aim to include membership of creators of both literary and musical material, but, in actual practice, we have found it difficult to associate with ourselves any large number of producers of musical material. When we hold our meetings we discuss questions that do not interest them, and they have tended to drift into Mr. Thomson's Association. As regards questions of this kind, of course, Mr. Thomson's Association, and ours, are in perfect unanimity. I am quite sure we endorse all his representations, and I feel quite confident that his society would endorse all ours. We have very few musical composers included in our membership. Our membership consists almost entirely of persons engaged in the operation of literary copyrightable material. I think I may safely say that we include in our membership the owners of from four-fifths to nine-tenths—from eighty to ninety per cent, of the royalties owned by Canadian authors. Our membership includes almost all of the prominent Canadian writers of literary material. You may wonder why our Association, consisting almost entirely of literary people, should be so interested in a bill which, apart from the non-contentious questions, deals almost entirely with musical performing rights. I may say, at once, that we have not very much to do, or say, about musical performing rights. We are quite willing to leave that to Mr. Thomson's Society. But there is an aspect of the bill which interests us materially. At least fifty, and perhaps one hundred, of our members possess valuable copyrights in foreign countries and are constantly adding to those copyrights by new production. Their right to obtain these copyrights rests in most of the countries of the world entirely upon our treaty relations with those countries through the Convention of Berlin or the Convention of Rome after we join. In addition to those members, all our younger members, I am quite confident, hope that they will, in time, produce material which will have a copyright value in those foreign countries. I do not suggest that all of them will have their hopes realized. These copyrights relate not to books alone, Sir; they relate to dramatic performing rights, and they relate, in particular, to the most valuable international rights, the right of reproduction on the cinematograph screen. To be of any value at the present time, for moving pictures, a composition must be able to hold copyright in all parts of the world, and, if anything should occur as the result of which our Canadian authors of material suitable for the screen should be unable to hold their copyrights in the countries of the International Copyright Union, their ability to sell them for movie production would be practically destroyed. There are other international rights of importance, but these are the chief ones. I understand that movie producers now insist upon obtaining a complete delivery of copyright rights in the whole world before they will consider the manufacture of a film.

By the Chairman:

Q. Do they insist, as the publishers usually do, upon an assignment of the entire copyright rights?—A. I do not suggest, Sir, that they insist on the assignment, but they insist upon an assurance that the film shall be able to hold copyright, not necessarily in the name—possibly in the name of the author—but in contract.

Q. Is it not a universal practice that they do not leave it in the name of the author?—A. Practically universal. I do not know whether I ought to take up the time of this Committee be reminding it of the fact that there are a large number of Canadian authors with valuable international rights, but it is a point which has not been mentioned so far in these proceedings. We have always had, in Canada, authors with valuable international rights. They have not always been able to assert them. Judge Haliburton produced a work which

was translated into practically every language in Europe. Owing to the condition of the Copyright law at that time Judge Haliburton, I imagine, received no remuneration whatever from most of those rights.

Q. Most of it was not even copyrighted.—A. No, I suppose not. But fortunately, being a lawyer and a judge, he was independent. Mr. de Mille, at a later stage, had a very valuable international copyright. At that time our membership—

Q. He is one of my own fraternity. He was unable to obtain copyright abroad?—A. I believe so, but his books had value abroad.

Q. Undoubtedly.—A. The present works of Professor Leacock, Ralph Connor, Mr. Packard, Miss Marshall Saunders, and quite a number of other members, have a substantial following abroad. In fact, all these rights are a part of the important invisible exports and do, to some slight extent, add to our favourable balance of trade. I mentioned that these rights depend entirely upon our being members of the International Copyright Union. If we ceased to be members of the International Copyright Union it would be necessary, I understand, for us to formulate individual and separate treaties with all these countries, in order that Canadians might continue to acquire these rights as their new works are produced. It would be an extremely difficult and, I fear, a slow process. It follows, therefore, that either of two things can destroy our present ability to obtain future copyrights in these foreign countries. I do not suggest that anything can destroy the copyrights that we already hold in any union country, because, even if we withdrew from the union, no country would cancel or even, I think, restrict any existing right. There are, I say, two things that could destroy that power which we value very highly. One is our withdrawal, the other is getting kicked out of the union.

By the Chairman:

Q. What do you mean?—A. There is no authority by which a nation can be expelled from the union.

Q. If I may be allowed to suggest, the only way in which any act of ours can be called in question is before the International High Court of Justice. —A. The International High Court of Justice.

Q. The International High Court of Justice. At least, I am so advised by the Law Officers of the Crown in Great Britain.—A. I thank you very much. If we had the right to determine what course of action does, or does not, constitute remaining within the terms of the convention—to determine for itself whether we are remaining in it or not, any other nation in the union has an equal right to determine—

Q. No, no. No other nation has the right to raise the question before the International High Court as to whether we infringe an International Convention.

Mr. ERNST: Further than that, Mr. Chairman, any other nation would have the right to take such legislative action within its own dominion.

The CHAIRMAN: But only after an international decision has been given.

Mr. CHEVRIER: I do not want to argue that at the moment.

The CHAIRMAN: I am simply saying I am so advised—and I am putting that in that broad form—I prefer to accept that advice rather than hear opinion, you know, unless it has been very carefully studied by the witness.

The WITNESS: I am very much obliged to the Committee for bearing with me, so far, upon that point, and, as I cannot discuss it with any authority,—not being a lawyer,—we will leave it now. But, yesterday, Mr. Chairman, you spoke of the possibility of our having to withdraw from the Berne Convention, or from the International Copyright Union, if the operations of super-monopolies became too distressing. That is a perfectly legitimate outlook to take, but it is an outlook that alarms us very greatly, and such a possibility as that impels us to make very strong representations to your committee.

By the Chairman:

Q. Quite so, but should there not be representations along the line of effective compromise, such as will meet with the approval of general public opinion in this country? All I am suggesting is this, that there is such a strong public opinion growing in this country against what they regard as certain excesses that that alternative may have to be considered some day. I think it is a very unfortunate alternative, and, therefore, we as a Committee are endeavouring to keep within what we believe, or what we shall decide, to be our duty under the Berne Convertion, as modified at Berlin, and as modified now by the Rome Convention. But, within those limits, we would like to make some effective compromise between those opposing interests, represented before this committee, and which have all made independent representations to the government as well.—A. Upon that point we are in absolute agreement with you, but we say that whatever conclusion you arrive at should be a conclusion which you are certain will be in conformity with the requirements of the Berne Convention, because the risks that you run with our rights, or rather our potential future rights in that matter, if you are not certain of the compatablity of your legislation with the Berne Convention, are very serious.

Q. That is a fair representation to make, and we will have an opportunity to consider it.—A. If I may now deal with one or two of the particular points about which we are alarmed in the matter of conformity to the Berne Convention, may I say that the first and most important of them is one which has been only slightly raised so far before this Committee and which I do want to stress a little further, and that is the retroactive character of the legislation that you are now proposing to enact. You are not only restricting future grants of copyright but you are reducing the area and extent of existing copyrights, which, we feel, are vested property, and which, we also feel, are so regarded by the International Copyright Union.

Q. Would you please explain.—A. I refer, Sir, to the fact that whereas we now,—for example, register a piece of music under the present requirements of your law in Canada—we now have a right to sell the performance, the right to perform that music, to any of the organizations specified in your new clause 11. If that clause is enacted we cease automatically to have any such right.

Q. Would you explain that, because you are a very intelligent man, and certainly I do not understand the application of that remark. Just explain it so that our intellects may grasp it.—A. I am very sorry, Sir, but there is, I understand, nothing in the present Copyright Act which would prohibit us from declining to grant to a church, college, school, or any charitable organization the right to perform a copyright composition, if we own the performing rights in that composition.

Q. That is the reference you make.—A. Absolutely, that is one example.

Q. I understand it now.—A. You were not present at an earlier stage this morning, Mr. Chairman, but I think you would have been interested in the possible explanation of that principle for which application was made this morning and which would have a restrictive effect on that legislation. It is one thing to say that that legislation applied only to future copyright as within the convention. It is another thing to say that that legislation applied to existing copyrights which are passed from hand to hand as within the Berne Convention.

Mr. BURY: And which might have been purchased with a view to the rights that subsisted in it at the time of the purchase which were not limited at all.

The WITNESS: May I, in that connection, draw to your attention the clause by which, always, we are granted the right to restrict radio distribution of copyright matter. It is the mechanical reproduction clause that I want to draw your attention to, article 13. By that clause it was provided that reservations and conditions could be attached, but it was also provided that the provisions of paragraph 1 shall not be restricted.

By the Chairman:

Q. That is the third subsection you are dealing with.—A. Yes, sir:

> and consequently shall not be applicable in any country of the Union to works which have been lawfully adapted in that country . . .

It is the retroactive point that I am referring to.

Q. Subsection 3 of article 13.—A. Yes. A nation very carefully abstains from admitting, because when it changes the conditions, when it begins to limit conditions of future copyright it very carefully abstains from permitting the restriction of an existing right. May I make the same point in regard to article 6. It was imported from the protocol, and it goes on to say—

Q. Are you dealing with article 6 or article 6 *bis*.—A. Article 6. It goes on to say:—

> No restrictions introduced by virtue of the preceding paragraph shall, in any way, affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put in force.

I suggest that those two examples show that it is an established principle of the Convention not to restrict the area, or application, of an existing right, and that principle has not been carefully safeguarded in the drafting of the present law.

Q. I think that suggestion is very appropriate.—A. I am quite sure, I have not the slightest doubt, Mr. Chairman, that you, and your Department, have excellent legal advice to the effect that the provisions of this Bill are in conformity with the Rome Convention. I am quite sure you would not bring in a Bill purporting to authorize the Governor General to adhere to the Rome Convention, unless you were advised that the provisions of that Bill were such as to conform to the Rome Convention.

The CHAIRMAN: I simply state this, with regard to certain sections of the Bill, definitions and other sections which are frequently referred to, that they are provisions for the purpose of bringing our Act into consistent harmony with the Rome Convention. With regard to article 10, we are advised that there is nothing in the Berne Convention either in the express intent, or the spirit of that Convention, which prevents any country from taking such measures as it may deem advisable to protect its people against aggresive monopoly; but that is understood with regard to all tariff conventions and all trade conventions, and understood with regard to the Convention which you are now dealing with. Now, that is the extent of the advice which we have received.

Hon. Mr. RINFRET: May I ask the Chairman for information. When he says advised, by whom.

The CHAIRMAN: Well, we are advised by the very best legal assistance that we can obtain, either in this country, or in England. And I am simply suggesting it as a matter that will have to be dealt with when we discuss at length the various aspects of it.

Hon. Mr. RINFRET: That is quite satisfactory, and I am quite satisfied that under the terms of the Rome Convention what you have said is perfectly true, that insofar as the Nationals are concerned we can treat them in any way we like, but we cannot, by our own legislation, treat the Unionists in this country in any other way but in the way in which the Berne Convention asks.

The CHAIRMAN: I am not going to discuss it, because this is not the time. But I am simply suggesting, that I am advised that there is nothing in the Berne Convention which prevents us from dealing with a monopoly established by Nationals of ours; that there is nothing in the Convention which restricts us from dealing with a monopoly established by foreign Nationals, insofar as it operates within our own country.

Mr. CHEVRIER: I think that is right.

The CHAIRMAN: That is all. I am not saying that this Committee will accept it; I am not saying that Parliament will accept it, but I am simply suggesting that as one of the matters which we must consider.

The WITNESS: In that case, Mr. Chairman, may I make the suggestion that it might be possible to qualify that clause in some such way as to make it clear that it applies only to companies and agencies which are monopolistic in character.

The CHAIRMAN: I quite agree with you, that the Committee, when it comes to consider it, must consider that phase of it, and we have suggested that already.

By Mr. Bury:

Q. You are talking now about section 10 when you are making reference to monopolies.—A. Correct Sir.

Q. Is there anything else, in section 11, other than direct retroactive element, or factor that you object to.—A. This is a matter of legal opinion, and, as I say, we have not paid for our legal opinion and I cannot tell you, therefore, what value it has.

By the Chairman:

Q. Just express your opinion clearly.—A. Well, we have legal advice, such as it is, that that might very probably be considered to be a violation of the Convention, inasmuch as it substracts from the area of the rights enjoyed by the author.

By Mr. Bury:

Q. You are dealing now with the retroactive aspect of it. —A. No, I have dropped that. I think the Committee are inclined to agree with me.

Q. But you say that in relation to future copyrights.—A. Well, I think there is a very strong probability. We ask, in the memorandum, which I shall ask the Committee's permission to file, that that and similar questions be referred to the Supreme Court of Canada, before the Act is put on the statute books.

The CHAIRMAN: You are at perfect liberty to make that request

The WITNESS: That is all, Sir, that we have in mind.

The CHAIRMAN: As my friend, Mr. Ernst, says, such an opinion, when we once obtain it, would have no practical effect.

Mr. BURY: The Privy Council might accept it.

Mr. ERNST: It is just simply a legal opinion.

The WITNESS: I must admit, Sir, that I was unaware of the fact that an appeal lay to the International High Court of Justice. The fact is not apparent from the terms of the Berne Convention, but if that is so is it possible to get an opinion from the International High Court of Justice in advance?

The CHAIRMAN: Well, we obtain a decision from them, not an opinion. It is common ground, I think, that, on a reference to the Supreme Court of Canada, we obtain an opinion which is not binding, and which has no legal effect.

The WITNESS: It is merely that we incline to think it would be a good opinion. And, in that connection, Sir, might I put into the record the concluding recommendations of that very valuable special report from the Select Committee on the Musical Copyright Bill of Great Britain, which was partially introduced yesterday.

The CHAIRMAN: You can put in the whole Report, if you wish.

Mr. ERNST: I would like to hear the particular portion read.

Mr. CHEVRIER: If there are only a couple of paragraphs, read them.

The WITNESS: Section 18, referring to the super-monopoly, was read yesterday. Section 19 reads thus:—

> It has been suggested to your Committee that any legislation to give effect to this proposal would be contrary to the terms of the revised Berne Copyright Convention of 1908. There appears, however, to be considerable difference of opinion upon the matter and your Committee recommend that His Majesty's Government should consider whether such legislation would conflict with the Treaty obligations of this country, and if so, should make make a reservation or declaration which would permit of such legislation before ratifying the Rome Copyright Convention of 1928.
>
> 20. If it should be found that no such legislation is at present possible, your Committee recommend that the Board of Trade should keep in touch with the position with a view to framing a policy for adoption at the next meeting of the International Copyright Union in 1935, which would secure freedom for His Majesty's Government to deal with any abuse of monopoly rights such as that to which reference has been made.

The CHAIRMAN: Well, we have to consider the question.

Mr. BURY: May we have all those sections put in so that we will not have to chase from one part to another.

The CHAIRMAN: If you do not wish to dispose of your copy we will put in a copy of that report, for reference, but not necessarily for publication for all the sections, so if you will enter the Special Report from the Select Committee on the Musical Copyright Bill, ordered by the House of Commons to be printed 3rd July, 1930, we will put it in for reference.

Mr. BURY: That will not be printed.

The CHAIRMAN: No.

Mr. BURY: It would be very convenient, for members of the Committee, if those paragraphs to which Mr. Sandwell referred, were put in the record.

The CHAIRMAN: Well, he has quoted them.

Mr. BURY: No, he deleted one of them because it was previously quoted.

The CHAIRMAN: Well, it is in the minutes twice already. I have no objection to putting the whole thing in.

Mr. BURY: Put them in together.

The CHAIRMAN: When the reporter puts in the quotation as given by the witness he will quote, literally, sections 18, 19 and 20 of the report.

Sections 18, 19 and 20 of the Special Report from the Select Committee on the Musical Copyright Bill.

> 18. Your Committee consider that such a super-monopoly can abuse its powers by refusing to grant licences upon reasonable terms so as to prejudice the trade or industry of persons carrying on business in this country and to be contrary to the public interest and that it should be open to those persons to obtain relief in respect of such abuse by appeal to arbitration or to some other tribunal. This should apply only in those cases where the ownership or control of copyright has been transferred to an Association.
>
> 19. It has been suggested to your Committee that any legislation to give effect to this proposal would be contrary to the terms of the revised Berne Convention of 1908. There appears, however, to be considerable difference of opinion upon the matter and your Committee recommend that His Majesty's Government should consider whether such legislation would conflict with the Treaty obligations of this country,

and if so, should make a reservation or declaration which would permit of such legislation before ratifying the Rome Copyright Convention of 1928.

20. If it should be found that no such legislation is at present possible, your Committee recommend that the Board of Trade should keep in touch with the position with a view to framing a policy for adoption at the next meeting of the International Copyright Union in 1935, which would secure freedom for His Majesty's Government to deal with any abuse of monopoly rights such as that to which reference has been made.

Mr. BURY: We will have it all there now without having to trace it up.

The CHAIRMAN: And, may I call your attention, just for a moment, to this: Before the Rome Convention was drawn up, the representative of the British Government asked to have inserted a clause which was agreed to by a number of the countries represented there, but was not unanimous. One or two countries held out, and the question has arisen, in England, because England has not yet ratified the Rome Convention, as to whether that clause should be expressed as a reservation in the acceptance of the Rome Convention, and, in order that it may be before the Committee too I would like to read it. It was suggested as an addition to article 11 of the Rome Convention:

> Nevertheless, the right to regulate the exercise of the right of authorization of public performance so as prevent such abuse of monopoly rights arising from the refusal of the author to grant permission for the public performance of his work upon reasonable terms as would prejudice the trade or industry or any person or class of persons carrying on business in any country to which the convention applies which would be contrary to the public interest is reserved for the Domestic Legislation of each country.

That is one of the reservations which it has been suggested the British Government may make, and, when we come to consider the question of reservations, which this Committee will have to consider, before making recommendations. This is one, and perhaps there are others, which we must consider.

Hon. Mr. RINFRET: Would the Chairman care to express an opinion on this: What would be the value of an adherence with a reservation such as that?

The CHAIRMAN: Well, the same value as an adherence which we authorized in the House of Commons a few days ago to the Act to which we adhere in connection with the—

Hon. Mr. RINFRET: I am free to admit that my main annoyance, when I had the responsibility of Copyright in this country, was to find what sanction, or what final authority, could be reached in matters like that.

The CHAIRMAN: Well, all I can say is, if we adhere to the Rome Convention, with reservations, it may be that all the other members of the Rome Convention could refuse to upset our application on that condition, and then we would be out of the Rome Convention and back upon the terms of the Berne Convention. That is my opinion of it.

Hon. Mr. RINFRET: I do not think we can consider the Berne Convention as something different. I think it has been amended, and does not exist separately.

The CHAIRMAN: The convention which we are under at present is, in effect, the Berne Convention, as revised at Berlin.

Hon. Mr. RINFRET: We would be out of every Convention.

The CHAIRMAN: Oh, no. We would not be out of the Berne Convention, if we did not adhere to the Rome Convention.

The WITNESS: It is quite possible for a country to remain an adherent to the old Berlin Convention for an indefinite period of time. The act of adhering to the Rome Convention transfers it from the one agreement to the other.

Mr. BURY: That answers your question, Mr. Rinfret.

Hon. Mr. RINFRET: It has been very hard to secure any definite decision on those matters.

The WITNESS: I think, Sir, that I have time probably, to run rapidly over those portions of this memorandum, of which, I think, you all have copies, which are still pertinent to the discussion. I do not want to take up your time by reading the whole thing.

By the Chairman:

Q. You have supplied this to each member of Parliament, have you.—A. Yes, I think so:

> The Canadian Authors' Association desires to express it appreciation of the decision of the government to secure the adherence of Canada to the Revised Convention of Rome of 1928, and of the proposed enactment of clause 14 of this Bill for that purpose, as well as of the amended and additional provisions contained in clauses 2, 3, 4, 5, 6, 7 and 8 insofar as they bring the Copyright Law of Canada further into line with the terms and principles of that Convention.

I want to point out that that does not apply to the sub-section on title. That is not a move to bring our legislation further into conformity with the Rome Convention. I do not think there is any reference to title in the Rome Convention, and our Association is not giving an opinion on the subject of copyright titles.

The CHAIRMAN: Well, so far as I am concerned, I am not wedded to that, but representations may be made that there is very grave doubt as to whether titles formed a part of the copyright—

Mr. CHEVRIER: I must commend that section about titles that you have in the Bill, Sir.

The WITNESS: There is much to be said in its favour. But, on the other hand, there are certain aspects, from our point of view, which are disadvantageous. Our Association has no opinion on that clause.

By Mr. Bury:

Q. Although you endorse clause 2 generally, you expressly omit the question of titles.—A. We endorse them, insofar as they bring our own law into accordance with the terms and principles of the Convention. The second clause has been dealt with by other witnesses, and I understand the Committee to be disposed favourably to some modification.

The CHAIRMAN: With regard to the moral right the Committee, by the opinions expressed here, I think, are favourable to some modification of that clause.

The WITNESS: We leave that clause in the hands of the committee:

> The Association approves of the repeal of section 40 of the existing Act as provided in clause 9 of the Bill, but begs to point out that in its opinion the first clause of the substituted section 40 will have the effect of destroying the validity of an otherwise lawful copyright whenever an alleged but not lawfully valid claim to the same right is registered in the Copyright Office. It would appear from the last eight lines of the clause that from the time when the unlawful claim is registered to the time when the lawful claimant effects his own registration, the unlawful but registered claimant is in full possession of all the rights nominated in the claim, and is not responsible to the lawful claimant for any use that he may make of them.

This goes into considerable legal discussion, which, I think, probably I ought not to raise. It will be raised before you by counsel. We cannot convince ourselves that the registration of a copyright right, which would not in itself be valid in the courts, may have the effect of precluding the holder of the valid right from appearing in the courts.

By the Chairman:

Q. Give us an example.—A. The outstanding example is that of the man who assigns a particular right in his property twice. The second assignee registers. In law the first assignee actually has the property.

Q. No, no. The first assignee who registers must be treated as having the property until the second assignee, or some other party or interest, obtains a judicial decision to the effect that that is a fraudulent title.—A. That, sir, we are perfectly satisfied with. That is voluntary registration. We have no objecion to it whatever, but we are not satisfied that the real owner—the second person referred to who has not established a registration—we are not satisfied that he can do anything, unless he registers himself.

The CHAIRMAN: I do not intend, at this moment, to give an opinion. The Committee will have to discuss that matter. But, if the first man who registers a patent, for instance, or a trade-mark, if it is registered in fraud or to the prejudice of any person in whom a real right is vested, may always contest that prior registration in the Courts.

Mr. CHEVRIER: Mr. Chairman, I think that is perfectly true. In that case which you cite it would not be necessary for the second one actually to have registered his assignment, in order that he may sue. But, if I appreciate the point that is now being made, it is that, if the first assignment is registered, then someone else comes along with a second assignment in his hand, the point is that he cannot institute any proceedings, unless he has registered that assignment.

The WITNESS: Precisely, sir. But we are not satisfied that under this Bill he can have access to any court.

Mr. CHEVRIER: That is a section that ought to be made clear. I think it would be a hardship if a second man, holding a title, could not be able to sue, unless, and until, he registers that assignment. In other words, if you were assured that the second assignment could not be registered, in order to institute action, then you would be satisfied. However I note the point.

The CHAIRMAN: I see the point, and we will consider it.

The WITNESS: If the point is before the Committee, that is all I want to say. And, if the voluntary nature of registration is preserved, in that manner, we do not particularly care what are the conditions attached to registration, what is the method of registration, or anything of that kind. But, if registration is going to become necessary, in order to affect the right which has been registered against me by someone else, then we would ask for further consideration.

The CHAIRMAN: If you will look at the decision in the Performing Right Society case in the appeal to the Privy Council you will find it is pretty clear about registration.

The WITNESS: Those regulations can be changed from time to time.

By Mr. Bury:

Q. Have you any suggestions as to section 40 (1) in the Bill, section 9. Where do you say the wording is wrong in that? I find it difficult to follow.

The WITNESS: Beginning at line 41.

Q. Yes.—A. "Provided that failure so to register shall not affect the validity of any such instrument;" The instrument is valid, but can it be brought into court.

Mr. BURY: It can be brought into court against the proper registered instruments, that is all.

The CHAIRMAN: Only as against the third party.

By Mr. Bury:

Q. Read on, Mr. Sandwell.—A.:—

And provided also that no unregistered assignment, grant, licence, mortgage or other instrument shall be valid or of any effect against any previously registered assignment,—

Mr. CHEVRIER: That is exactly the point that Mr. Sandwell raised. Should not we, in the Committee, clarify that?

The CHAIRMAN: If that objection is valid, we will consider it.

Hon. Mr. RINFRET: It is not the intention of the Bill.

Mr. BURY: It is utterly impossible for me to follow the argument; I am trying to get from Mr. Sandwell what he objected to.

Mr. CHEVRIER: That is not the point Mr. Sandwell raises; because an unregistered one shall not prevail against a registered one, meaning you cannot sue unless registered.

The CHAIRMAN: That is not the opinion we have.

Mr. CHEVRIER: Should not we take that into consideration? We have that statement.

The CHAIRMAN: That objection is valid, we will consider it.

Hon. Mr. RINFRET: I think the Chairman said it was not the intention—

Mr. BURY: It is utterly impossible for me to follow the argument of half a dozen gentlemen, when they all talk at once. I was trying to get from Mr. Sandwell what he objected to in the section, as it stands now. As it reads now, it is: "provided also that no unregistered assignment, grant, licence, mortgage or other instrument shall be valid or of any effect against any previously registered assignment, grant, licence, mortgage or instrument to an assignee, grantee, licensee, or other transferee for value and without notice." That simply means, as I understand it, that the first assignment registered in point of time is valid against a subsequent assignment in point of time—

The WITNESS: My point is Sir, that a subsequent assignment—my point is, that the earlier assignment which has not been registered—must be registered in order that the courts would take cognizance of it, in order to claim its precedence.

The CHAIRMAN: Is that worth while arguing? I do not agree with the witness.

Mr. BURY: I should like, for my own satisfaction, to have it settled.—A. I have no desire sir, to discuss a point of law with you.

Q. I should like you to tell me what this means. You say that the prior assignment, in point of time, which is an assignment unregistered?—A. Yes.

Q. And subject to the making of which a subsequent assignment was registered, is no good, unless it is registered, no good for any purpose?—A. I do not see how it could get into the courts at all.

The CHAIRMAN: You can bring it in under section 40.

Mr. BURY: Allow me to finish what I am trying to say.

The CHAIRMAN: Yes.

WITNESS: Where any such unregistered and where a subsequent register was made—in other words, whether subsequently registered or not, makes no difference.

The CHAIRMAN: So it is valid.

By Mr. Bury:

Q. What is the meaning of "whether subsequently registered or not?" I get it registered to be valid against those prior registrations. It seems to me the section is perfectly right?—A. I bow to your interpretation.

The CHAIRMAN: I know in the Maritime provinces, from which I came, that registration of bills of sale is effected—

Mr. ERNST: And deeds.

The CHAIRMAN: A bill of sale is not, in itself, valid but I know that the courts always exercise jurisdiction in setting aside the registration.

Mr. ERNST: Take a bill of sale in the province of Nova Scotia, where a bill of sale must be registered and prior registration gives prior title, if a subsequent bill of sale, or if a bill of sale has been given to two persons, and one is registered and the second person comes along, he can go into the courts and, by common law, say that the first bill of sale was an infringement and he can set aside the first registration by order of the court and get absolute registration. I do not know if any court has jurisdiction in the matter; it is a matter of common law.

Mr. CHEVRIER: That is not his point.

WITNESS: I appreciate your point, Mr. Ernst. Does a copyright exist to the same extent, in common law, as a piece of property?

The CHAIRMAN: No, it does not, but once made a piece of property, by common law, it does come under the jurisdiction of the court.

By Mr. Chevrier:

Q. By statute.—A. That is entirely a matter for the Committee.

Mr. ERNST: Of course, we can easily fix that.

Mr. CHEVRIER: His objection is he thinks the two must be registered.

The WITNESS: The association believes that clause 10 of the bill, by imposing formalities upon certain classes of owners of coypright and by regulating the price which they may charge for their copyright property, is a violation of the Revised Convention of Berlin to which Canada is now adherent, and of the Revised Convention of Rome, to which it is proposed to adhere, and that this clause should not, therefore, be applied to works whose protection in Canada is guaranteed by these Conventions. But there is a special point about that clause which we did not consider, when this memorandum was drafted. So far as I can gather, it is only the intention of the committee that this clause should apply to musical performances.

The CHAIRMAN: I think, as a matter of fact, there is no Association in Canada, at the present time, which deals with other phases in respect of musical works, and we have that in mind.

WITNESS: If I might say so, Mr. Chairman, practically all dramatic performing rights, that is rights which are available for anybody to take other licence upon are not exclusively held for the purpose of touring companies and owned by the owners of the copyright of the play who are almost always an incorporated company—

Q. If they form a combination?—A. Oh, no, no. But your bill does not say anything about monopolies or combinations.

Q. I think it does; I think in essence it does.

Mr. BURY: The Chairman suggested we might have to put in something else.

The WITNESS: Of course, because I do not think we contemplate forming any monopoly in dramatic rights, and, of course, that applies not only to dramatic rights, but to any other form of literary creation.

The CHAIRMAN: Will you allow me to state that the Committee, I think, are of opinion, and have practically decided, that the clause, in its present form, will not directly affect any individual author with respect to his copyright in his work, whether dramatic or otherwise.

The WITNESS: That, I am afraid, does not go far enough to meet our requirements. Probably Section 10 does not touch an individual; but, in order to make a proper and effective use of our property, we must be able to sell it to a corporation.

Q. Certainly.—A. The instant we sell it to a corporation, it falls under clause 10.

Q. Do you think so?—A. I can see no other interpretation.

Mr. BURY: Can you sell to a performing right corporation?

The CHAIRMAN: If it is a publishing company that publishes your work, it certainly does not fall under this section. This applies exclusively to a corporation which enters into the business of buying and selling copyright in a wholesale way, or buying and licensing copyright in a wholesale way.—A. The corporate owners of all plays that they first of all produce, and when they have become exhausted as first run material for a play by first companies, it is afterward made available for other companies. Copyright is vested in the corporation.

Q. Quite so.—A. And would certainly come under this clause.

Q. I do not think so.—A. And it appears to me also that the outright sale of the copyright of a book, and if the rights that go with the sale include the right to dramatization, it seems to me that that also falls under your clause.

Q. Then you have made your objection.—A. Yes. I have nothing further to say about it.

Q. It is a question of clarification.—A. You have here an interesting suggestion before you, which was made yesterday, and to which I think I should refer, namely, that the price fixing provisions of Section 10 should apply to recording rights that is, rights for recording of sound, not only of phonograph, but sound films as well. It is a very interesting suggestion indeed.

Q. That is an extension.—A. That would be an extension of the present bill. The suggestion was made yesterday. I do not know what the views of the Committee are, about it, but there is a point I want to make. You have undoubtedly under the Copyright Union, the perfect right to regulate the terms of sound recording. It is specifically provided for.

Q. Yes.—A. But Col. Cooper suggested that would result in building up a world wide industry in sound films. Well, as far as that work goes, the article of the Convention which grants to this country the power to regulate prices for sound recordings also says expressly, in Article 13, under sub-section 4, "adaptations made in virtue of paragraphs (2) and (3) of the present article—these are reserving paragraphs giving to your parliament the right to fix prices"—adaptations made in virtue of paragraphs (2) and (3) of the present article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country."

The CHAIRMAN: Quite so.

The WITNESS: So any prospect of building a world-wide industry in sound films in Canada as based on price regulation seems to me to be rather remote.

Q. I differ from that. There could be no exportation to another country without— —A. Consent.

Q. As such foreign country could seize and destroy the film.—A. The importation must be with the consent of the real owner of the rights, who is not likely to consent, if his control of those rights has been taken from him in Canada. We have nothing further to add to the memorandum.

Q. Do not let us get too general observations. Subsection 4 of Article 13 says:

> Adaptations made in virtue of paragraphs (2) and (3) of the present article, and imported without the authority of the interested parties into a country where they would not be lawful, shall be liable to seizure in that country.

The penalty would be upon the Canadian company operating in Canada under the price restriction. It could not export to foreign countries and avoid a possibility of seizure in that country.—A. Quite so.

Q. That is all?—A. That is all the representation I want to put before the Committee, sir.

The CHAIRMAN: Gentlemen, I think we shall adjourn now. It is the desire of the Committee that these hearings shall not be indefinitely prolonged. To-morrow we shall hear, among others, Mr. de Montigny. Are there any others who desire to give evidence?

Mr. GUY: I have asked for permission to appear on two clauses of the act.

The CHAIRMAN: Whom do you represent?

Mr. GUY: I represent myself. I do not represent any organization, but there are two clauses that should be given very serious consideration, one is registration and the other is in connection with infringement.

The CHAIRMAN: We shall now adjourn until 4 o'clock, with the understanding that we shall proceed this afternoon with the evidence of witnesses other than Mr. de Montigny, who will be summoned for to-morrow morning, and after that it will be a question of argument.

Committee adjourned to 4 o'clock.

AFTERNOON SITTING

On resuming at 4 p.m.

LOUISE SILLCOX, 242 Calhoun Ave., New York City, called and sworn.

The WITNESS: I am secretary of the Authors' League of America, and the Executive Secretary of the Authors' Guild, and the Executive Secretary of the Dramatists' Guild. All three organizations are organizations in the United States. Our work in the United States is similar to the work of the Canadian Authors' Association, and the general opinions on the Bill, of the authors, were presented this morning by Mr. Sandwell, of the Canadian Authors' Association, and I simply made my notes on a few points, because I want to endorse what he said on behalf of the Canadian Association, as representing also the authors of the United States. I do not want to duplicate what he said.

The points I made were, first, there was a discussion this morning on the legislation of assignments, and a question as to taking off the record assignments which might be invalid. In this connection, on the chance that it may be of interest to the committee, I should like to read the wording of a section which was proposed in our country to cover this contingency in a Bill that was before Congress last year.

By Mr. Bury:

Q. That is the Bill that did not pass.—A. Yes, the Bill that did not pass.

Q. It was presented to the House, but, in point of fact, did not pass.—A. It passed the House and was reported unanimously by the Senate, but did not pass the Senate.

> Sec. 45. Subject to this Act, the Supreme Court of the District of Columbia or a judge thereof, may on the application of any person aggrieved, by writ of mandamus upon due cause shown, order that any registration or record made under this Act may be cancelled, annulled, and expunged or similarly order the correction of any omission, error or any defect in any registration or record or attempted registration or record. An appeal shall lie to the Court of Appeals of the District of Columbia from any final order made under this section.

I cannot tell, because I do not know your courts here, whether such a clause is necessary, but, in case you wanted it, I thought it might be useful.

The statement was also made this morning, by Mr. Robertson, that on February 28, in Congress in our country, the fairs and exhibitions were added to the clause which is similar to your clause 11. Such a suggestion was made but rejected. As proof of that, in this same Bill, which I file, you will find that in the Bill passed by the House and reported unanimously by the Senate fairs and exhibitions were not excluded and the section reads exactly as your section 11.

Q. The section reads exactly as our proposed 11 does now?—A. Yes. Those are simply corrections. Now, I do not know whether Mr. Sandwell stated definitely on behalf of this association, but I should like to state definitely, on behalf of our Association, that we are opposed to price-fixing as a principle. The difficulties that we see in clause 10, as drafted here, I should also like to point out from the author's standpoint. I am not going to go into the difficulties, as we see them, from the point of view of the Performing Right Society of the United States, because that has already been covered. I am going to go into the difficulties from the point of view of the individual author who owns a right which he has not assigned. First, you will notice in the beginning of that definition, and later in 10(2), that the Governor in Council shall have the right to revise, reduce, increase or otherwise prescribe. I want to call your attention to those words "or otherwise." In the amusement industry, in order to preserve our rights, or to make the proper financial use of it, we sometimes find it necessary to delay licences. We anticipate those words might mean that we are obliged to licence.

Q. It says "or otherwise prescribe."—A. That means one of three ways, revise, reduce or increase, and "or otherwise" can only mean that that can be set if you do not set it yourself.

Q. The Governor in Council is given power from time to time to revise, reduce, increase or otherwise prescribe the fees, charges, or royalties— —A. Or otherwise to prescribe. Could it mean that if you did not list the price that you want—

Q. He can fix a price.—A. If you listed the fact that you did not want a price—just let me explain a specific case. The example that we have most frequently is the case of a musical play.

Q. Before you go on to that, subsection 2 only deals with the revising, reducing or increasing the fees to be charged, or the royalties to be charged by a society, association or company, not by an individual author.—A. But let me explain a minute. We have a musical comedy, let us say. Mr. Buck used the example the other day of the Zeigfield Follies. It is customary for him to make his own contract, that is, Mr. Zeigfield, an individual contract.

Q. With whom?—A. With a producer, who is incorporated. The contract that is usually made, in the dramatic business, prescribes that exclusively such performing rights vest in that manager, so long as he plays that play and gives royalty to the author. So that the author's performing rights for a leased period, for the length of the lease, vest in Florenz Zeigfield Incorporated. The author has not parted with his copyright, but with his performing rights at the moment. It is an individual author selling to an individual corporation the right to produce his play.

Q. That is, the producer of the play, selling to the producer of the play.—A. The right to play the play in exchange for royalties. He gives him a lease.

Q. Producing rights.—A. Producing rights, Yes. But what is the position under this clause? The producer and the author are exceedingly anxious that while this play is running in New York, or Chicago, or some big city, to see that it shall not be played over the radio, or in cabarets, or in other places. If a person can go to a cabaret, and hear all the songs, he will not go to the theatre. Now, our difficulty is that if we have compulsory licensing of this sort, if we do not list the price at which we are selling, or at which we are willing that this song shall be used in Canada, it can be used and we will have no suit against the infringer under this clause.

Q. We are talking about the fee now.—A. If we do not list the fee at which we are willing to have it used, it can be used without our consent.

Q. Where does that occur in the Act? You cannot collect.—A. Well, the same thing. We would have a right to no remedy. Now, the thing that we are most interested in, dramatic music, is, for a certain number of months, to prevent that being used, except in certain places; thereafter, we are willing that it should be widely used, and we are afraid that under this clause we cannot stop use. That was the other point I did not think that Mr. Sandwell made on the price-fixing difficulty.

Our next difficulty is that, for those authors who live in Canada, or England, or in a part of the States not near the metropolitan centres, it has been customary to use an agent who is resident in the metropolitan centre. For instance, a Canadian author will use an agent quite often who is resident in London, or New York. That agent is usually a company incorporated to protect the author's financial interests. We feel that the mere employing of a literary agent would bring us under the requirements of this section, in spite of the fact that it is really an individual author and a literary agent selling only on a commission. Besides that, we have in every case pretty nearly a demand on the part of the person who uses, or is producing our work, a request that he shall, when we use the work in other ways, if that man happens to have a corporation, that producer or book publisher, or anyone else, we would have come under this section. So that we believe that the number of cases where the individual author would not be obliged to file when he wanted performing rights would be practically nil, or down to about 10 per cent. The majority of cases would have to be filed.

Now, in dramatic works, we could file what we want for amateur or stock rights. We do not see any particular reason for it, but it could be done. We do not know how we could file a literary, or dramatic or musical work with the price we want for motion picture rights, because there is no company to-day in France, Germany, England, or America that is buying territorial motion picture rights. They all insist on buying the world picture rights. Unless we would be purely arbitrary, and set some ridiculous sum that we did not know how we came by it, an author could not honestly file what he wanted for the Canadian motion picture rights. Our main difficulty is that we would be obliged to be arbitrary. I mean as individual authors. Our association, of course, does not handle any rights, except those of the individual authors. I have not had any complaints that we are charging too much, but we do not quite believe that it is practical. The only other point that I can give testimony on would be—

Q. You are clear in your mind that you are dealing with charges or fees, not which the author asks but which the society, association or company asks for the right of reproducing these.—A. Sir, no society or association owns dramatic performing rights in Canada, America or England, except the petty rights. Such performing rights, and motion picture rights, are owned by the author.

Q. Are owned by whom.—A. The author.

Q. Well, are they owned by the Authors' Association, or are they owned by the individual author.—A. By the individual author, sir, but, under this section, if he employs a literary agent to dispose of them, the agent would, in my opinion, be in the business, he would be a corporation, a company.

Q. If he was a society, an association or company he would be.—A. But the agent is a company, always. I would not personally give my rights to be sold by an agent who was not an incorporated agent. The first two words do not apply, in the cases I am mentioning to you, but the last does.

Q. That is, so long as it is an association or company or society.—A. And also it is customary, in all plays, for the manager to have a share in the amateur and stock rights, so you see they do come under the section. The only other testimony that I think would be of use to you would be if you desire that I should give you the general terms of the various contracts that are made in our profession that would be covered by section 10.

Q. Yes.—A. Whenever an author makes a contract with a literary agent, it is written, or verbal, that the agent shall have the right to sell either in the United States of America and Canada, or United States, Canada and England, we usually make them for the English speaking countries, and those agents are practically always, in the States, incorporated, and in London, they are also incorporated companies. So that all those instances, where the company would come under definition 1, we would have to file the list of prices, and, where it comes to the question of price-fixing, or where it was a performing right that the agent had the right to sell, it would be included. These contracts call for the agent to have a limited time to sell, sometimes six months, sometimes a year, sometimes two or three years. The agent has for his services ten per cent —no contract to be valid unless signed by the author. In the magazine contracts, in the States and England, in about fifty per cent of the contracts to-day, the author sells his own first serial rights and there will be no connection with this clause. He does not part from his copyright, and Clause 10 does not apply. In the most of the poorer magazines, the cheaper magazines, the author parts from his rights to the magazine, and, therefore, the magazine is bound to file under Section 10. It would not be of any interest to our association. It is another principle. In the book contracts, the older authors who have had two or three books sold, usually sell only on a royalty basis, and do not give any dramatic or performing rights to the publisher, so that they do not come under Clause 10; but, on the first books, it is very usual for the publisher to demand a share therein, from 25 to 50 per cent of what you would call motion picture or dramatic rights—other rights. In these cases, since the publishers are all companies, it would be necessary for the author to file—or the publisher—the author, having the major right, would have to do it—the amount that he wanted for the Canadian Motion picture rights, and if he thought there was a play in his book he would also have to file that; but it is less usual for us to sell the dramatic rights in a book than it is the motion picture rights.

Now, on the play contract, it would be very effective here. The plays fall in two classes, music plays and non-music. The normal play contract calls for the manager producing within a certain number of months. If he produces, and keeps the play running for three weeks, then he and the author, to all practical intents and purposes, become joint owners in all other rights within the territory mentioned, for it is usual, in the case of United States and Canada—in the case of England, it is the British who file; it does not include United States and

Canada—for the length of the contract so long as he keeps the play running. The minute he allows the play to run off the boards, and does not play it seventy-five times a year, the play reverts to the author. All the time the play is running the performing rights are vested jointly in the company and an individual author, and my opinion is that jointly we will have to file the prices that we want for these various works, and even if we do not have to file—if the manager were an individual as in the case of Winthrop Ames—the minute the play has run its course in the big cities we sell it for stock, and then, of course, a stock broker—

The CHAIRMAN: Is that a stock company?

The WITNESS: Stock means for a stock company, but he sells to the stock company through stock brokers, and these brokers are regularly in the business of selling performing plays. Now, those prices are known. We know what we get for a hit and for another play. That could be filed. Now, when we come to the publishing rights of these plays it is the custom, in both Canada and the United States, to sell what you, or I, would call the amateur rights, and the little paper-bound book rights, to a company who are agents for selling the amateur rights. Now, that agent sets the prices, but under the author's direction; and again they are quite uniform, and again the right to give performances for charitable organizations, or to waive fees, rests in the author, if he is resident near the broker. Sometimes, he gives his broker consent, but, more often, I must admit, the permission to waive fees for charitable organizations has been assigned, in the case of the dramatists, to our society. I make the decision—In the case of George Bernard Shaw—if there is to be a fee or not. In the case of a charity, it rests with me. We have found a very simple way of doing it, in the States. We let the newspapers—if the newspapers investigate and decide that they will give a charity rate for this charity performance, we automatically waive our fees; and, another way of doing it, is to let the Charity Organization Society approve the proceeds and fees, and, if I receive a report from them that it is all right, it is all right. Those are the only contracts in connection with a regular play which I could file. On musical plays, the contract differs slightly, because the rights of the musical publisher enter. The music publisher publishes the sheet music, and, by custom—this is subject to contract—usually makes the mechanical sales to the disc people. Those terms are all set forth in regular contracts, and they are very uniform. They are very much alike one to another. The only thing that differs is the price we charge. Some authors can get a higher royalty than others, but the other terms do not vary much, though there is no reason why they should be alike. I forgot to mention, in the case of plays, that the manager shares, with the author, in the motion picture rights under the condition that he produces and keeps his play going for three weeks. There, again, comes the old problem of how we would set the fee for motion picture rights to file. It is a physical impossibility if we would be honest about our compliance with the section.

Mr. BURY: Have you any other statement to make?

By Mr. Irvine:

Q. I still cannot see how the individual author comes under Section 10 (2); how he is affected.—A. He does not know, if he does not use the services of any company in marketing his work in Canada.

By Mr. Bury:

Q. He does not know anyway; but the company, which acts as his agent for selling performing rights, does?—A. Yes. Then the agent must file, but the truth is that the author has control; he must tell his agent what fee to file. He must tell his agent what to do, because the agent, after all, follows his wishes in the matter.

By Mr. Irvine:

Q. I think that this clause applies only to companies who have obtained licences through the performing right society.—A. It does not, sir.

Mr. BURY: It refers to any society, association or company which has authority, either through itself, as the owner of the rights, or through the original owner of the rights, to issue licences. Is that right?

Mr. CHEVRIER: Perfectly true.

Mr. BURY: Supposing, for instance, the owner has the rights and does not want to part with them, but makes a society, or association, his agent to issue grants, performing right grants of a work, then that agent society will surely be a society, association or company which may legally collect in respect of the issue of the grant for performances. It does not say collect for its own benefit, or use as the owner; it may collect as an agent. I should imagine that would be right; I do not know.

Mr. CHEVRIER: Yes. That falls within the section.

Mr. IRVINE: I do not believe it does.

The WITNESS: The word "companies"—we do not happen to have any associations who make licences except occasionally I do, but it is usual under a power of attorney—but as companies we do it very often—the word "company" is not limited to company owners.

Mr. BURY: Now, are there any other questions?

Mr. CHEVRIER: I want to compliment Miss Sillcox on her very illuminating evidence.

R. H. LEE MARTIN, called and sworn.

By the Chairman:

Q. Give us your name, address and your business connection.—A. R. H. Lee Martin. I live at 23 Oxford Apartment, Winnipeg, Manitoba. I am the Managing Director and Secretary of the incorporated society known as The Musical Protective Society of Canada. That society was organized in July, 1927. If the Committee desire, I shall be glad to file the certificate of incorporation, just in case you care to refer to it.

Q. File it for reference.

By Mr. Irvine:

Q. I would like to know, briefly, the function of your Society; what does it protect?—A. In order not to encumber the record, or to take up a lot of time of the Committee, I have a number of copies of a little pamphlet which the society got out in 1927, when it was first started. I might briefly explain, however, that the society was organized primarily to bring together the various interests who are engaged in the public performance of music in Canada. As you all know, this matter of performing rights has been considered by previous Committees of the house and has been agitated due to the activity of the Canadian Performing Right Society. Prior to the organization of the Musical Protective Society, various interests such as broadcasters, theatres, hotels, fairs and exhibitions have been all seeking some remedial legislation with respect to the demands and charges of performing rights societies. Many of them had got to the point of asking for complete exemption. This society was formed for the purpose of bringing all of these various interests together so that, instead of a multiplicity of demands being made for legislation, the various interests should, if possible, get behind one particular bill, or get behind the endeavour

to secure some particular kind of legislation, rather than make a large number or unrelated and disconnected proposals. The position of the executive of the Society, and their names appear on the booklet which I have just filed, has always been that we fully recognize performing rights societies as a necessary evil. That is, a necessary evil not only for the composers of music but, also, for the users of music, and, when I say evil, I do not mean it in any ugly way at all but, merely, of course, that users would be very much better off if they did not have to employ any society at all.

By Mr. Chevrier:

Q. You say they are a necessary evil for the user. How do we get back to the author or producer?—A. I mean if they did not have to use any instrument to collect their fees they would get a larger proportion of the collection than they do where they have to go to the expense of organizing and maintaining a society.

Mr. IRVINE: They might not get any.

The WITNESS: Or not get any. If anyone objects to my calling it a necessary evil, I will withdraw evil and say they are necessary.

The CHAIRMAN: A necessary instrument.

The WITNESS: A necessary instrument. The society was formed for that purpose, and we have tried to instruct the various members of the society in the law as it exists in Canada to-day, but we have always felt that some legislation should be enacted which would enable some governmental authority to restrict the amount of fees which such societies would charge as such. Now, some of the members of this society, or rather some of the groups which this society represents, have already been heard here, and I do not wish to take the time of the Committee by repeating much that we have already heard. I will therefore get down immediately, to the bill before us, and, with the permission of the Committee, make a few comments on some of the sections.

By Mr. Chevrier:

Q. Before you proceed. You have been particularly kind in letting me have a copy of this pamphlet. I notice that Colonel Cooper is Vice President and Assistant Treasurer of your company?—A. Yes.

Q. I notice, at the top of your little booklet, these words, "This society has been formed for the dual purpose of promoting the development of Canadian music and protecting the interests of those who utilize music for public entertainment."—A. Yes.

Q. You are not at all concerned with the protection of those who produce? —A. Not at all, not this Society. It is not for this purpose. The Performing Right Society is.

Q. Then this protection is for the user?—A. The user, yes.

Q. Then, on the page before the last, I find this—I read it hurriedly, but it is interesting: "We do propose, however, to urge parliament to amend the present copyright law so as to protect those who are concerned in public performance of music against the unrestrained demands of the Performing Right Society." Will you explain what the unrestrained demands are?—A. Yes. What I mean by that is that, so far as the Copyright Act stands at present, from a legal standpoint, at any rate, the Performing Right Society can ask, let us say, from a theatre a licence fee of ten cents a seat, or ten dollars a seat, or ten hundred dollars a seat. There is nothing in the law which, in any way, prescribes the fees. I am sure you understand that.

Q. Well, let me see now. All along we have been in the habit of saying ten cents a seat a year. That is so, isn't it?—A. I am not a theatre man.

Q. You mentioned that. You should speak whereof you know. I say we have; and they can charge you ten cents a seat a year. Have you any personal knowledge of that not having been charged?—A. I heard testimony which has been given here that that has been charged.

Q. Have you heard of any complaint, or have you heard of any place, at any time, in any connection, where they charged a thousand dollars a seat a year?—A. Oh, no; I am not suggesting that.

Q. You have just suggested it now.—A. No. I beg your pardon.

Mr. ERNST: The witness said that the power was there.

The WITNESS: The power.

Mr. BURY: He was simply illustrating the fact that they have unrestricted power.

Mr. CHEVRIER: I want to be fair to you, but do not make any inuendos or insinuations.

The WITNESS: I do not want to.

By Mr. Irvine:

Q. May I ask a question for my own information. Do you mean, by "user of music", the person who pays to hear a song, or the person who pays somebody to sing a song?—A. I would say the user of music, I mean those who use music.

Q. The exploiter of music?—A. Yes.

Mr. CHEVRIER: Bear in mind, if you do not want to deal with the shop on the corner, you may deal with the shop on the next corner; in other words, if you do not want to pay what those people ask for their music, you still have the music in the public domain.

The WITNESS: I am glad you brought that up, Mr. Chevrier, because that is something I feel—

Q. In other words, I want to make this plain, that the Performing Right Society do not control a monopoly of the music. There is a wider field, and tell me if I am wrong, there is available a powerfully wide field where you can still get music and pay nothing for it.

The CHAIRMAN: The evidence is that they control ninety per cent of modern music.

Mr. IRVINE: Which is the largest monopoly you can get.—A. If the committee will permit me to call attention to something which has not been mentioned before, I would like to point out this, that a great deal of the music, which normally would be in the public domain, is not there, in fact, for all practical purposes, because it has been arranged by some other musician and that arrangement itself is capable of being copyrighted, and those arrangements—

By Mr. Chevrier:

Q. You mean to say that the music in the public domain can be restricted in any way?—A. Yes, it can be arranged.

Q. Outside of the moral right?—A. Yes, it can be arranged.

Q. You will have to go a long way to convince me of that.

Mr. BURY: Surely, it can be arranged.

Mr. ERNST: I had it proved to me yesterday at a luncheon, that the chorus we have heard so often, "Yes, we have no bananas," came from Handel's Messiah.

Mr. CHEVRIER: It is distortion.

The WITNESS: I am not talking about a case of that kind at all; I am talking about a re-arrangement of the musical works.

Hon. Mr. RINFRET: Mr. Martin, the fact that it has been arranged surely does not force you to use that arrangement?—A. No, but the practical situation

is that a great deal of the music, which normally would be in the public domain, the only copies of those works which are actually sold, are arrangements by some other musicians.

Mr. CHEVRIER: We will not argue that now, because you cannot convince me of it at all.

The WITNESS: If I cannot convince you, I will not argue.

Mr. CHEVRIER: The law is clear.

Q. Do you mean to say that the music can be taken out of the public domain and re-arranged for their own purpose?—A. Yes.

Q. That is what you say?—A. And the arrangement is copyrighted.

Q. They have no right to take that music from the public domain and re-arrange it.

The CHAIRMAN: Why not?

Mr. BURY: They are doing it.

Mr. CHEVRIER: I certainly will not argue that, because every day there will be a certain amount of music go to the public domain.

The WITNESS: Anybody can take it and arrange it.

Q. They have the physical power to take it, but they have not the moral right to take it.—A. Yes they have.

By the Chairman:

Q. Do you mean that a musical composer may take any music that is in the public domain and rearrange it in any manner he sees fit, so long as he does not, by such a rearrangement, reflect upon the reputation or prejudice the honour of the composer?—A. That is exactly the situation.

Q. And if he does so rearrange it, he can go to the Copyright office and have it registered?

Mr. BURY: That is his arrangement.

Hon. Mr. RINFRET: I agree with that. Let us take a comparison. There have been quite a number of companies playing Shakespere in modern dress, with a certain rearrangement on the part of the performer, in order to give it a new flavour. But the fact that Shakespere has been played in modern dress is no reason why we would not have the right, without paying copyright, to play Shakespere in the original.

The CHAIRMAN: Quite so. There is no interference with music.

Hon. Mr. RINFRET: And the other arrangement does not impoverish the public domain.

Mr. ERNST: You need modern music to run dance halls, which is not in the public domain.

The CHAIRMAN: Allow him to proceed, he has made his point clear.

The WITNESS: The first section of the Bill, which really is of no concern to the Musical Protective Society, it may surprise you to learn this, is the one that deals with copyright title. I am not going to make any suggestions, or complaints, in regard to the provisions of the bill in this regard, but I would just like to relate an actual incident which has recently come to my attention, which probably illustrates, as graphically as I can, the kind of situations which are liable to arise in connection with an attempt to grant copyright of titles.

During the past winter, the Canadian National Railways have been broadcasting plays based on incidents in Canadian history. These plays were written and prepared for radio broadcasting by Merril Dennison, a Canadian author. One of these plays was entitled "Laura Secord," and, of course, dealt with some of the incidents connected with the War of 1812, in which, of course, as

you would know, she was given an important character. Merril Dennison's play was one which was specially written for radio broadcasting, and was in the ordinary form of a play. The title of the work was "Laura Secord." The play was produced by radio broadcasting from one end of Canada to the other. It developed, later, that an author in Toronto had written what he called a musical drama, or operetta, the title to which was also "Laura Secord." He wrote a letter to the Canadian National Railways protesting that they had violated his copyright; that "Laura Secord" belonged to him; that he had copyrighted her and nobody could write a play about Laura Secord except himself. A comparison of the two disclosed that only four of the sixteen characters in Dennison's play were mentioned at all in the musical drama, which it was supposed to infringe; that there is not the slightest evidence of any plagiarism, as far as the text is concerned, and that the incidents had been treated in about as different a manner as it was possible to do, having in mind that they dealt with substantially the same historical incidents and the same historical characters.

Now, it seems to the broadcasting interests, who are represented by the Musical Protective Society, if the law in Canada is to be amended so as to permit the copyright of titles, that the wording of the section should be very carefully guarded so that incidents, such as the one that I have mentioned, would be readily cleared up, because it is obviously ridiculous that anyone could have copyrighted any historical incident, or the name of any historical character.

Q. Any objections which I read all seemed to be of the opinion that there was no means of ascertaining whether a title had been used before or not.

Mr. ERNST: Without registration.

The WITNESS: Obviously that is so.

The CHAIRMAN: For instance, in one case, it was suggested by a complainant that he had looked through all the works in a library giving the indices of modern plays and works and had selected a title, which was not included there, and yet, afterwards, found that he had taken the title of another work which was comparatively well known to a generation of 15 or 20 years ago, but which had escaped public notice in recent years.

Mr. BURY: I appreciate very well what the gentleman says, and I think we can get down to some means of meeting it.

Mr. CHEVRIER: You cannot very well copyright a title or a proper name, but supposing something is done along the lines of the Patent and Trade Mark department, where proper names as such are not registered—

The WITNESS: It is a very difficult subject.

Mr. CHEVRIER: There is nothing too difficult for this Committee.

The CHAIRMAN: The suggestions made by a previous witness that the title should be, in order to maintain copyright, original and distinctive, were very helpful to me.

The WITNESS: Mr. Chairman, that does not meet the difficulty that you suggested. How is an author going to know that somebody else has not selected that, if there is no registration or no record of those titles?

The CHAIRMAN: The only penalty is, he would not be able to maintain copyright in the name he had selected against others.

Mr. BURY: Unless he registered.

The CHAIRMAN: Unless he registered.

The WITNESS: The only suggestion that this Toronto author made in this connection was that in case Merrill Dennison wrote another Canadian historical play he should consult with him, and find out whether he had used the titles.

Mr. CHEVRIER: There are heaps of works written about Napoleon, and these works are copyrighted, but nobody would ever suggest, because these works are copyrighted, that nobody else could write about Napoleon. It is so extravagant, with all due respect—

The WITNESS: It was a rather ridiculous claim, but I am merely bringing it out as a striking illustration.

The CHAIRMAN: It is a helpful suggestion, and it was causing us some considerable difficulty as to what words we might use in order to clear it up.

The WITNESS: In regard to the section dealing with the moral right, it has been suggested that the section, as printed in the bill, should be amended so as to include "performance." The only thing that I would like to point out in that connection is this, in case the Committee feels that performance should be included in the "moral right" section.

The CHAIRMAN: We should amend.

The WITNESS: That you should amend; that you will have to be, as I know you will be, very careful that the language is not so broad that the moral right of an author may be held to be infringed by a simple performance.

The WITNESS: In other words, as I suggested to someone the other day, would a singer going "flat" be a distortion of a musical work. I do not want to be facetious about so serious a matter as this.

The CHAIRMAN: I do not know the opinion of the others, but, after listening to the discussions which we have had here, it seemed to me that every purpose would be served if the words "the publication of" were left out of this section, leaving it entirely to the courts to decide as to whether publication, performance, production or reproduction was a distortion, mutilation or other modification which would be prejudicial to the honour or reputation of the author. That is the way it seemed to me.

The WITNESS: In my humble opinion that would be a solution of it, and I think a very good one.

By Mr. Chevrier:

Q. Have you read section 6 *bis* of the Convention?—A. Yes.

Q. Have you any objection to the wording of the section?—A. I do not think I have.

Q. Will you be satisfied to take it as it is there in the Convention?—A. Yes.

Mr. BURY: That is just what the Chairman says.

The CHAIRMAN: I simply was giving my own reflection on that, and it seemed to me that all the objections which I have heard would be completely met, if we struck out the words: "the publication of," and allowed them to read: "the right to restrain any distortion".

The WITNESS: Continuing with the review of the sections, section 9 has already had extended discussion by previous witnesses and I am aware that the matter is fully before the Committee so that I really do not feel justified in discussing it in detail, particularly as I have nothing that is really fresh to offer.

The CHAIRMAN: Would the Committee regard it as interfering if I express another reflection that has come to me that will be open for discussion. But, if it appears that certain sections of this Act must be very radically amended to meet with the approval of the Committee, and of Parliament, it seems to me that it might be quite possible, within the terms of the Convention, to preserve a voluntary registration such as exists in the first part of the present section 40, which is voluntary, and to provide some alternative to the last three lines which reads:

> And no grantee shall maintain any action under this Act, unless his and each such prior grant has been registered.

Now, it has been suggested to me, by attorneys who deal with this copyright matter, that we have gone very far in certain sections of the Act in assumptions in favour of any person who alleges that he is an author or the assignee of an author. They say, at present, if you bring an action, the author's rights are assumed by the court under our section, leaving the whole burden of proving any laches in continuity of title to the defendant. They say that is an innovation in, what I may say, civil law in this country, and they suggest that it would not be in violation of the existing convention if, as a matter of court procedure, we, in dealing with copyright, should provide, along with that assumption in favour of the plaintiff, that the plaintiff should file attested copies of the documents upon which he relies, so as to enable counsel for the defendant to consider that title, and its weakness and its strength, in preparing his case; they say it is impossible, under the present procedure, not with regard to where we can force protection within Canada, but with regard to many titles which are held abroad in England, Italy, France, Germany and foreign countries, it is impossible, except by issuing commissions to those foreign countries, out of the court, to procure evidence as to the continuity and validity of the title, and, what I am really suggesting, is that if section 10 of the Bill, for instance, goes and if certain further amendments are made to section 9, we may have to consider our whole position with regard to the registration of titles, and the effect of our registration.

Mr. CHEVRIER: That is a very valuable suggestion, Mr. Chairman.

The CHAIRMAN: I may say to those gentlemen present it means, I think, that every one of us come here with pretty open minds anxious to solve a problem which is raised by reason of the conflicting interests which certainly do exist.

The WITNESS: You mentioned in your remarks, sir, that if section 10 had to go—did you mean by that it would be dropped from the Bill.

The CHAIRMAN: Oh, no no. But, after we have heard all witnesses, this Committee, with perfectly open minds, will discuss any modification or revision of these various sections.

The WITNESS: I might say further in regard to section 9 of the Bill, which repeals section 40 of the present Act, that the Musical Protective Society, members of the Society, have no basic objection to section 9, provided section 10 is subject to such modifications as the Committee may see fit to make to it, but, at the same time, maintaining the general spirit of that section, provided that is retained in the Bill.

By Mr. Bury:

Q. Provided what is retained in the Bill?—A. Section 10 of the Bill.

By the Chairman:

Q. Have you any objection to section 10?—A. I have no objection to section 10, except—and this is really not a matter that deeply concerns the membership of the Society that I represent, but inasmuch as it might eliminate some of the objection, particularly the matters referred to by the previous witness, we see no objection to deleting from such section (a) the words "literary, dramatic and artistic" and confining it to "musical". I am merely saying we have no interest in seeing those words retained.

Q. You would leave out "literary"—A. "Dramatic" and "artistic".

Q. The point has been suggested to me that "artistic work" would cover certain cinematograph work dealing with artistic subjects. But, leaving that aside, would it not be necessary to retain not only "musical" but "dramatico-musical works" in order to cover what is the clear intent of this section.—A. "Musical work" is defined in the present Act, is it not?

Q. Yes, it is.—A. And I think that definition is sufficiently broad.

Mr. BURY: Subsection (*p*).

The WITNESS: I may say that I think all the members of our Society, which comprises the largest users of music in Canada, realize that dramatic works cannot very well be handled on the same basis as what we ordinarily mean when we say a musical work or a piece of music.

The CHAIRMAN: These opinions I have expressed are not the opinions of the Committee, because we have had no time to reflect. Some of these things I have been thinking over, and, after hearing the discussions in this Committee, which are very informative and very helpful, it struck me that it is quite possible that the Committee might favourably consider the abandonment of that, to reduce it to "dramatic" or "musical works" such as are mentioned in section 3, sub-section 2 of the Copyright Act itself. I think, from the discussion, that we might well modify it in certain particulars there.

The WITNESS: Well, that would be helpful, but it would not go all the way to eliminate some of the difficulties that the previous witness brought up in regard to dramatic works. It is not part of my duty to argue that case. I am merely interested primarily, and those that I represent, in seeing a workable Act and a reasonable Act adopted, because no one realizes more vividly than I do that if an Act is put through which contains glaring injustices it is not going to be allowed to stand, and we might as well try and get something that is reasonably workable, now, as tackle the whole thing over again, next year, or the year after that.

The CHAIRMAN: Quite so. Now would you please revert to the Bill.

By Mr. Bury:

Q. You told us a moment ago that you have no objection to section 9.—A. Yes.

Q. What I want to know is, whether you are not prepared to cut the condition out that you mention. Have you any objection to section 9, apart altogether from section 10.—A. Well, yes I have.

Q. What objections are there to section 9.—A. Because, at the present time, section 40 of the Act furnishes a certain degree of protection to music users, not such a great protection, however, as some people suppose.

By the Chairman:

Q. You have some predilections in its favour?—A. Yes, in the absence of section 10.

By Mr. Bury:

Q. I do not yet understand. What objections have you to section 9 of the Amending Bill.—A. I do not object to the section, as such, at all. As you, of course, know, the present section 40 requires a registration of the assignment as a condition precedent to bringing suit.

Q. That is right, you are in favour of keeping that feature.—A. Keeping that feature in, providing that section 10 is not put in.

Q. Wait a minute, that is a different matter, that is reversing the thing.—A. Well, it may be reversing the thing, but that is the situation.

The CHAIRMAN: What the witness has in mind is, that under the registration section, that is 40, which is amended by 9 of the Bill, you have full protection by what is practically compulsory registration, but, if compulsory registration is entirely abolished, and you are placed under the purview of section 10, you would prefer, if there is a possibility of your being placed under section 10, to maintain section 10 in a more or less modified form.—A. Yes, in the modified form in which I mentioned.

By the Chairman:

Q. Because it enables you, then, to ascertain directly with whom you have to deal, by investigation of a more or less complete record of the commodities in which that wholesale dealer is dealing; it is something along that line.—A. Exactly. Some of the previous witnesses, and some of the discussion in regard to section 10, have given me the impression that in some people's minds the provision under section 10, requiring the filing of lists, was made for the purpose of enabling users of music to know what music is copyrighted. That, to my mind, is of no interest at all.

Q. Why not.—A. Generally speaking, we know what music is copyrighted. It is all copyrighted. We do not have to consult any list about that, for all practical purposes. But what the filing of lists by the Performing Rights Society does is this: It enables us to know, when we take a licence from them, what works they control, what copyrighted works they control, you see, which is quite a different thing.

Q. And it enables you, therefore, I suppose, to deal with them only in respect of those which they do control.—A. But the main thing is that we know what they control. Now, it is perfectly obvious, from the previous testimony of representatives of the Performing Rights Society, that the members of these societies join for a limited period. I think it was for five years.

The CHAIRMAN: Yes. Five years in the United States, and some of the contracts in England—I have seen it here or in the English evidence, some of the contracts in England are for five years also.

Mr. HAWKES: Wherever we can make them for the full period of five years we do, sir.

The CHAIRMAN: My memory is defective, but I think that in France, and in Germany, there are contracts for limited periods also.

Mr. HAWKES: I am not quite acquainted with the French and German procedure, but the constitution of the English society, being only for five years at a time, we cannot make contracts for any other periods.

The WITNESS: I am not speaking of contracts that the Society makes with music users. I am speaking of contracts between the members and the Society.

The CHAIRMAN: You are dealing with the users.

Mr. HAWKES: No, sir.

The CHAIRMAN: With the users. As a matter of fact, I am not clear; but it seems to me that I read in some of the evidence of the British House of Commons Committee that your contracts with musical composers are not indefinite, but are usually limited to a term of years.

Mr. HAWKES: I might explain, Sir, that the constitution of the British Society is in quinquennial periods. We have to renew our constitution every five years, and members renew with the full period of the quinquennial.

The WITNESS: It is a five year period in both cases.

Mr. HAWKES: In the case of the French Society, it is twenty-one years.

The CHAIRMAN: It is indefinite, and I remember reading the evidence in the case of the English Society.

The WITNESS: With reference to the American Society alone, it appears to be operated on a slightly different system from the English Society. There is no way that music composers can tell when these five year terms of membership begin and end. Now, this filing of lists is merely asking the Society to inform those who it is asking to take their licences—to inform them what works at the time they have the right to grant licences on, because, otherwise, we do not know what we are contracting for, and certainly, when we are paying money, we are entitled to know what we are getting. As it is now, generally

speaking—I want to emphasize the fact that this is a general statement—what the Society licence really means is that they agree not to sue us for the period of that licence. That is all. They tell us they control a lot of works and we believe them, but we do not know what.

By the Chairman:

Q. You are suggesting that you are purchasing freedom from litigation? —A. That is all.

Q. That may be an exaggeration.—A. I do not think so. I do not want to exaggerate.

Q. Take the ordinary choral society or town band or women's choir—all these people—they certainly are not guided by expert evidence such as you can obtain. You really represent certain interests that can procure the assistance of experts and keep them employed; but for those who have not your expert assistance, they are crying out for some way in which they can identify the works in which copyrights exist in Canadian Performing Right Society.—A. Then it is useful for two purposes; but the greatest utility, to those I have the honour to represent, is in knowing what we are getting when, and if, we take a licence from the Canadian Performing Right Society. That is the greatest utility.

Q. Their reply to you is that their rights are so varied, and so widespread, that you can have very little doubt when you deal with them.—A. That is all right for them to say, but, as a matter of fact, these are entirely private societies. They can go out of existence to-morrow. They can break up into all kinds of units—perhaps can withdraw. Of course in one case I know of a music publishing concern in the United States tried to withdraw and the courts would not let them do it.

Q. That is from the American society?—A. Yes, during their five year contract. But there are all kinds of possibilities as to these privately owned and operated societies having full freedom over their own affairs, which they should have; but when they come to deal with the general public I think the general public are entitled to know quite definitely what they are offered.

By Mr. Chevrier:

Q. Just on that point. The filing of the list would not indicate the length during which that work is to run. When you make a bargain with the Performing Right Society on works that have been filed they would not, as I understand it from the section, because it is not mentioned—the filing would disclose only the rates which they were asked for those works, but they would not indicate for what length of time they were to run. So if you decided, you would have to inquire if the rates are agreeable to you on these various categories. You would still have to inquire from the Performing Right Society how long these things are to run.—A. I am talking about Section 10. From this standpoint, I realize that, in all probability, you are going to make some changes in Section 10, if this bill passes. Now, the matters which I referred to were merely mentioned for the purpose of acquainting this Committee with our viewpoint. I am not saying that each word in Section 10 should remain there as it is now; but I really thought that the Committee was entitled to have our point of view in regard to this matter, and we are then content to leave it to the good judgment of this Committee as to what to do with the information I am trying to give you. If I am giving you information which is not correct, you know as well as I do that I am going to be corrected.

The CHAIRMAN: The information as to the five year period? In calling our attention to that, although it was disclosed in some previous evidence, it is useful now.

The WITNESS: That is why I am doing it, because I felt that probably you had not got the significance of that from the standpoint of music users, and also I did not feel you had it emphasized sufficiently to you that these are purely private societies that have great freedom as to how they manage their affairs and what to do. There is nothing to prevent them, that I know of—any of these societies, dissolving at the end of any five years term. You, or Parliament, are making a law now which is to continue on for a considerable period of time.

Mr. CHEVRIER: I appreciate that very much. Your difficulty is that you do not know for what length of time these things will run.

The WITNESS: I do not know.

By Mr. Chevrier:

Q. You know, I presume, however, that when you enter into a bargain you can find out for what length of time these are to run, but your difficulty is that you do not know as to when the Society may go out of business.—A. We can find out what they want to tell us. We cannot find out what they do not want to tell us.

Q. What they want to tell you?—A. Yes. We are in no position to compel them to tell us anything except that if we play their music—

The CHAIRMAN: You cannot compel any disclosure?

The WITNESS: We cannot compel any disclosure as to their contracts and so forth.

By Mr. Chevrier:

Q. I want to protect you on that, and what I want to get at is this: Do you mean to say that if you went to the Performing Right Society and said, "I have this category." Now I will take Clause A, Clause C and Clause B—do you mean to tell us you cannot find out for what length of time some of those works are to be in their possession?—A. I do not know. I cannot say whether I can or not.

Q. Certainly, that is a question of contract; it is a question of bargain. You certainly are entitled to know from them. You say, "I am going to make a bargain with you for the year. I do not happen to know when this was assigned to you, but are we protected for a full year?" You have the right to ask them that.—A. I have the right, but suppose they disagree with me and say, "We cannot bother to run through all these lists and find out when these different memberships expire."

Q. I agree with you there.—A. Pardon me. I am talking about something which can be wiped out in a few minutes. I do not know. I am not a member of either of these Performing Right Societies, and, except from conversation with their officials, I know nothing about their internal economy.

The CHAIRMAN: Are there any other matters concerning which you would like to speak to us?

By Mr. Bury:

Q. You have dealt with Section 10 (1).—A. I think that is all that I have to say, except that, if I might presume to cover Section 11, which was dealt with this morning by Mr. Robertson. There was just one question which was asked and which, apparently, Mr. Robertson was not sufficiently informed upon, and was asked to answer, and as a good many of the Fair Associations belong to the Musical Protective Association, I think it is only right that I should furnish the Committee with information.

The CHAIRMAN: Proceed.

The WITNESS: The Canadian National Exhibition at Toronto, last year, offered a prize of $1,000 for the best musical work that was submitted in a competition. They did that for Canadian music and Canadian causes. They have

band competitions each year for which they give prizes. They assemble, as you all know, a very large choir which stimulates the interest in music and signing, and probably indirectly, but none the less certainly, stimulates the sale of sheet music, and, in general, the Canadian National Exhibition is one instance of an exhibition in Canada that has done much to foster music and the interests of Canadian composers and musicians. The question was brought up this morning, particularly to Mr. Robertson, but he did not know what they had done and, therefore, he did not bring that point out. Further than that, I understand, last year, if my memory serves me right, even the year before, a very large part of the music which was played before the Canadian National Exhibition consisted of works of Canadian composers. I am quite sure that Mr. Waters, the general manager, instructed the bands and mandsmen, in many of their programs, to try to endeavour to present Canadian music in their bands. Whether he was able to carry that out fully or not, I am not informed, but I know that was the spirit which was behind the manager of the Canadian National Exhibition.

By Mr. Chevrier:

Q. You have no difficulty in getting that music?—A. We get splindid music. When I said Canadian music you understand I meant works of Canadian publishers.

Q. You had no financial difficulty about fees or rates or royalties.—A. That is a matter which the Exhibition can tell you. I have nothing to do with that.

Q. You are not aware of that?—A. No, I am not aware of that.

By Mr. Bury:

Q. Have you any idea as to the approximate proportion of music that will be used, and any idea as to what would be involved in carrying out this suggestion of the free use of music in fairs?—A. No, sir. I am not a fair man. I do not know.

Hon. Mr. RINFRET: You think it would cost more than $1,000?

The WITNESS: Well now—

Mr. BURY: He does not know.

Hon. Mr. RINFRET: My point is this, it is very commendable to give $1,000 to a composer of a piece of music, but that only shows that the Canadian Exhibition at Toronto would dispose of, at least, $1,000 for music. It may be fair to distribute that to a composer of music—

The WITNESS: I am afraid I would be getting into difficulties by expressing an opinion.

The CHAIRMAN: What the Toronto exhibition are afraid of is that it would place them under the control of a monopoly, which would be excessive in its charges, with respect to the music they desire to play.

Mr. BURY: That seems to be the general theme running all through this evidence.

The WITNESS: Pardon me, I should like to make one statement before I leave the chair, and that is, I rather anticipate that a witness for the Canadian National Exhibition will be here to-morrow, and if it is convenient for the Committee to hear him, he would be very glad to furnish you with a great deal of information in regard thereto.

The CHAIRMAN: Mr. de Montigny is to be the first witness to-morrow, and, if a representative of the Canadian National Exhibition is present, we will hear him.

Witness retired.

Will you please tell me what it is you wish to say?

Mr. GUY: I just want to say—

The CHAIRMAN: Will you please tell me who you are and whom you represent.

Mr. GUY: I am an author and composer.

WILLIAM E. GUY, called and sworn.

Mr. CHEVRIER: Before you go on with this witness, will it be convenient to hear Mr. Thompson, who will only be two or three minutes.

The CHAIRMAN: Step aside for a moment, Mr. Guy.

COLONEL A. T. THOMPSON, called.

The WITNESS: I merely wish to read this letter into the record, on behalf of the Canadian Pacific Railway, in this case. The letter is dated May 14, 1931:

The CHAIRMAN,
Special Committee, Copyright Act,
Parliament Bldg.,
Ottawa.

Re—Copyright Act

SIR,—I am in receipt of a letter, dated May 13, from Mr. E. P. Flintoft, General Solicitor for the Canadian Pacific Railway.

Mr. Flintoft finds it impossible to attend the meeting of your Committee, which is to take place on Friday the 15th, at 10 a.m.

Mr. Flintoft instructs me to say that if the present provision as to registration of assignments of copyrights is changed, to suit the wishes of the Performing Right Society, adequate provision should be made for the approval of their licensing charges and royalties, by the Governor in Council, or some other independent tribunal, after due notice to all parties interested.

Mr. Flintoft says, further, that the Canadian Pacific Railway Company has no objection to any reasonable measure of protection for the authors.

Yours truly,

(Signed) A. T. THOMPSON,
Parliamentary Counsel for C.P.R.

Mr. Cahan leaves the chair, and Mr. Bury replaces him.

WILLIAM E. GUY, recalled.

By the Acting Chairman:

Q. Will you tell us what you wish?—A. Yes; I am coming to the point in a very short time.

Q. What is your name?—A. My name is Guy, William E. Guy.

Q. What is your address?—A. I have been writing under that name.

Q. What is your address?—A. My present address, 216 Laurier avenue, West, Ottawa, Canada.

Q. What is your occupation?—A. At present I have none, I get what I can.

Q. Is that your real name, or a *nom-de-plume*?—A. My real name.

Q. You stated you had been writing under that name?—A. Yes, and that is my real name. This is what I am asking for: Under section 12, the need for joint registration of songs or musical publications printed or published in the United States of America for Canadian authors—

The witness commenced to read a statement, but was stopped by the Acting Chairman, as it was patent that the witness was attempting to discuss matters not within the scope of the inquiry entrusted to the Committee.

As the witness was not prepared to discuss the provisions of Bill No. 4, he was not heard further.

Witness retired.

Committee adjourned until 10.30 a.m. on Thursday, May 21st.

SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 5

THURSDAY, MAY 21, 1931

WITNESSES:

Mr. Louvigny de Montigny, Ottawa, Canadian Correspondent, Bureau of the International Copyright Union, Berne, Switzerland.

Mr. Lee H. Martin, Winnipeg, Man., on behalf of Canadian National Railways System.

Mr. Henry T. Jamieson, President, Canadian Performing Right Society.

Mr. Ralph Hawkes, Director Canadian Performing Right Society.

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MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

THURSDAY, May 21, 1931.

Pursuant to adjournment, and notice, the Committee convened at 10.30 a.m.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Ernst, Irvine and Rinfret, 7.

Mr. Bury in the Chair.

Mr. Louvigny de Montigny, Chief Translator (Laws), the Senate, Ottawa, Canadian Correspondent of the Bureau of the International Copyright Union, Berne, Switzerland, who had been requested by the Committee to appear and give evidence, was called, sworn and examined.

Witness read a letter to give a concrete example of the abuse of the use of music " for religious or charitable purposes ".

Witness discharged.

Hon. Mr. Cahan now resumed the Chair.

Mr. Lee H. Martin made a statement on behalf of the Canadian National Railways with reference to the Bill under consideration.

Mr. Henry T. Jamieson, President, Canadian Performing Right Society, recalled.

Witness files the following exhibits:—

AA1. Assignment, dated 15th February, 1926, from Performing Right Society (London, England) to Canadian Performing Right Society;

AA2. Exclusive Licence, dated 21st May, 1930, from American Society of Composers, Authors and Publishers to Canadian Performing Right Society;

AA3. Exclusive Licence, dated 24th July, 1930, from Performing Right Society (London, England) to Canadian Performing Right Society;

AA4. Form B. Assignment of individual rights by British or American Society to Canadian Performing Right Society;

AA5. Form A. Assignment of individual rights by authors or composers, members of British or American Societies, to such Societies.

Above are printed as an appendix to Minutes of Evidence.

Committee adjourned to 4 p.m. this day.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

AFTERNOON SESSION

COMMITTEE ROOM 268,

THURSDAY, May 21, 1931.

Pursuant to adjournment, the Committee met at 4 p.m.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Ernst, Irvine and Rinfret, 7.

Mr. Bury in the Chair.

Mr. Ralph Hawkes, Director, British Performing Right Society, recalled.

Hon. Mr. Cahan now took the Chair.

Mr. Arthur W. Anglin, K.C., Toronto, of Counsel for Canadian Performing Right Society, addressed the Committee.

The Committee adjourned at 6 p.m. until Friday, May 22, at 10.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 268,

THURSDAY, May 21, 1931.

The Select Standing Committee on Bill No. 4, an Act to amend the Copyright Act, met at 10.30 o'clock a.m.

Mr. BURY (*Acting Chairman*):

The ACTING CHAIRMAN: We will just come to order.

We are trying to finish the taking of the evidence this morning. Who is here to give evidence first?

Mr. CHEVRIER: Have the minutes been adopted? Insofar as they appear in these proceedings, I am satisfied.

The ACTING CHAIRMAN: Do you want to take them as read?

Carried.

The ACTING CHAIRMAN: Who will give evidence first?

Mr. CHEVRIER: Mr. de Montigny was asked to be present this morning.

The ACTING CHAIRMAN: Is Mr. de Montigny here?

LOUVIGNY DE MONTIGNY, called and sworn.

By the Acting Chairman:

Q. Will you just describe, Mr. de Montigny, what position you hold and what interests you represent in the inquiry here?—A. May I make a statement, Mr. Chairman, if you please. In thanking the Chairman and the members of this Select Committee for requiring me to attend before it this morning and to give any information I may be able to give on the subject matter of Bill No. 4, may I be permitted to state first that, being an official of the Senate, I beg to appear before this Select Committee of the House of Commons with the kind leave of the Senate authorities.

Q. Have the reporters your official position in the Senate? Your official position has to go in the minutes.—A. Yes, that is why I made that statement.

Q. It has to go on the minutes for future reference.—A. Before this Copyright Committee, I represent, first, myself, as a Canadian author; secondly, I represent Canadian authors at large. I am the Canadian correspondent of several Unionist Authors' Associations; moreover, I am the Canadian correspondent of the Permanent Bureau of the International Copyright Union of Berne, and I beg to appear more or less, on behalf of those different Associations, though primarily as a Canadian author, and for Canadian authors.

By Hon. Mr. Rinfret:

Q. Would the witness explain to the Committee, or, perhaps it will come later in the course of his remarks, what he means by the "Permanent Bureau in Berne."—A. Under the International Convention, and under the Revised Convention of Rome, an international office is instituted and maintained, in Berne, where this Bureau is presided over by a very eminent legal authority,

Professor Ostertag. The first object of this Bureau is to give advice to interested governments, to the contracting governments as to the terms of the Convention. This Bureau is instituted and maintained by those contracting countries and paid for by them. Canada, as her share, pays, for the maintenance of this Bureau, $2,000 a year. It is to give advice as to the meaning of the Convention, and the furthering of the doctrines of the Convention. This Bureau has no legal authority whatever, never gives any decisions, it just gives advice that is asked for.

By the Acting Chairman:

Q. It is a Bureau composed of experts?—A. Absolutely, experts, who just give opinions on copyright matters only.

Hon. Mr. RINFRET: I thought I might bring that out.

The ACTING CHAIRMAN: I understand.

By Mr. Chevrier:

Q. Mr. de Montigny, will you go through the bill, section by section, and make any observations you desire to make?

By the Acting Chairman:

Q. Have you any general statement to make before you do that?—A. I have no general statement, Mr. Chairman, because I am in a very peculiar situation. I have not asked to come here, I have been required to come here, to give information, and I shall answer any questions you may put to me.

Q. Will you do what Mr. Chevrier suggests, namely, pick out the clauses of the bill and make any comments which may have suggested themselves to you, upon the clauses of the bill which we have been discussing, especially?—A. Yes, Mr. Chairman.

Q. Are there any clauses in the bill which you think require special comment?—A. Yes. To start with clause (2) of the bill. We are quite in accord with this amendment, which no doubt is meant to be the equivalent of article 2 of the Revised Convention. The new paragraph (V), when it is enacted, that a title of the work—

Q. Which section are you dealing with now?—A. Clause 2 of the bill now. We very gladly approve of the new paragraph used, and we are very glad to approve of the new disposition enacted by paragraph (V), the purpose of which will be to include the title of work, and thus the whole work will be protected.

Q. What have you got to say about the suggestion that was made yesterday, that it would be extremely difficult to impose copyright on a title unless it was distinctive and original?—A. Certainly some time it will be difficult, and I would not object, for my part, to this clause being redrafted, to make it more precise, provided the spirit of the section be maintained.

Q. You are in favour of including the title in the copyright providing the definition of title is sufficient to rule out generalities or unoriginals?—A. Provided the original title be protected. You take a famous work like "Maria Chapdelaine." "Maria" is a common name, and "Chapdelaine" is a common name, but a combination of both make it original. You heard about the tremendous success of this work, and it is known as a masterpiece all over the world. Now, if I would write a book or a moving picture entitled "Maria Chapdelaine," and signed it "deMontigny," under this amendment I will not be entitled to do it, because it is a creative title; but if I write a book "History of France," "History of Canada," or "Life of Macdonald," "Life of Laurier," anybody could write a book and use the same title because, it is a common name.

By Hon. Mr. Rinfret:

Q. I understand, Mr. de Montigny, that the Convention of Rome has not, nor has any previous convention distinctly decided on that point; but has it been your experience, as an expert in copyright matters, that the title has always

been considered a proper matter for copyright?—A. The thing has been decided many times by tribunals, especially in France. I know of some people who have taken original titles from other works for themselves, and that they were condemned under the jurisprudence of the country, but not under the convention.

Q. That is considered as part of the work?—A. As part of the work.

Q. When it is not distinctive or original.

By the Acting Chairman:

Q. For instance, take the well known Child's book, "Alice in Wonderland," and "Through the Looking-Glass," there are titles which are considered as much a part of the work as the contents themselves.—A. Under the jurisprudence, I know such titles have protection, so that no one would take that same title.

By Mr. Chevrier:

Q. Then, it is a question of wording?—A. We do not object to the section being redrafted, providing the spirit is maintained.

Q. Have you any objection to section 2, paragraph (*m*)?—A. No, nor to "performance", nor to (*q*), nor to clause 3 of the bill, which is a different phase of the corresponding article 14 of the Revised Convention.

Q. Have you any objection to section 4?—A. No objection at all to clause 4.

By the Acting Chairman:

Q. Where is your first objection now?—A. I have not come to present objections, but if I am permitted I will make some remarks on clause 5.

Hon. Mr. RINFRET: Will you permit me, before you make your remarks, to indicate that it has been practically admitted that it is the intention of the committee to delete from that clause the words in the 36th line, "the publication."

The WITNESS: Yes, Mr. Rinfret. I have read the evidence which has been given here at the previous meetings, and I found out that it was the intention of your committee to modify that; but I have something more to say about it.

Q. Then, clause 5 is not perfect?—A. Will you allow me, gentlemen, to call your attention to Article 6 bis of the Convention, which is the Article which protects that right.

Q. 6 bis?—A. 6 bis. Under the Convention, the stipulation is much wider, because it covers the full moral right. By this article 6 bis the contracting or adhering countries to the union have explicitly reserved to them the right whereby each country may determine the conditions under which these rights shall be decided. That means, that any country may restrict that right to any extent.

By Mr. Chevrier:

Q. It is free to determine.—A. Free to determine.

By Hon. Mr. Rinfret:

Q. Paragraph 2 of Article 6 bis?—A. Paragraph 2 of Article 6 bis. Paragraph 2 of that same Article 6 bis prescribes the means of redress for safeguarding these rights; that the means of redress shall be regulated by the legislation of the country where protection is claimed. A moral right is a very specific right, you cannot measure it; it is a moral right. And there is nothing in the present Copyright Act providing for special redress in the case of infringement of that special right.

The ACTING CHAIRMAN: Well, Mr. de Montigny, the bill, in section 5, makes it illegal to infringe on the moral right of the owner of the copyright. Now, that is in keeping with the requirements of Article 6 bis. Article 6 bis says that it shall lie within the jurisdiction of the national parliament, or national courts,

the national legislature to determine the conditions under which those rights shall be exercised. That does not do away with the right. The right is, in the first place, substantially established and no local national legislature can take away the right. All the national legislature can do is to lay down conditions under which that right may be exercised and also lay down the redress which is open to a man whose right has been infringed. Now then, in our bill here, under section 5, the right is reiterated. Our bill makes that right legal in Canada; our bill makes an infringement of their right illegal, and therefore exposes a man who is guilty of that infringement to certain penalties, with a civil action.

The WITNESS: Pardon me, Mr. Chairman. This we define as a special right, a moral right which does not exist to-day in our statute—it needs a special redress, because it is a special case of infringement.

By Mr. Chevrier:

Q. In other words, there are no remedies.—A. There are no remedies to be found.

Mr. CHEVRIER: The moral right is a new creature by statute in Canada and therefore no legal remedy could have been anticipated to punish its transgression. At the same time there is a disposition in the Convention that once moral right has been established specific remedies should be enacted, in cases where it is violated, and as I understand the witness, he is saying that at the present time there is no sanction in the Canadian law that would apply in the case of an infringement of the moral right.

The ACTING CHAIRMAN: There are no peculiar remedies. However, it is a matter of legal discussion. But surely when a statute of the country makes an Act illegal, gives me the right in the first place and then goes further and makes the infringement of that right illegal, which it would be anyway, if I was given this right by statute then if you infringe that right simply because there is nothing specific attached to it under the law, that does not prevent me taking an action in the courts for damages for the infringement by you of my legal statutory right.

Mr. CHEVRIER: Undoubtedly that is right but as the law stands at present, Mr. Chairman, I submit that nobody can show me any remedy under which this could be remedied or cured.

The ACTING CHAIRMAN: That is a legal matter and, after all, Mr. Montigny is calling our attention to it. We can discuss it afterwards. The point has been made clear, and your contention is that the purpose and letter and spirit of 6 bis will not have been observed by Canadian statute unless there is a specific penalty attached to the infringer of the right that is recognized in paragraph 5 of the Bill.

The WITNESS: That is so, Mr. Chairman. We need a specific remedy.

Hon. Mr. RINFRET: I think it should go on record.

The ACTING CHAIRMAN: It will go on record, just so long as we know what the point is.

Hon. Mr. RINFRET: I wish to say that we should go on record as agreeing with the point made by Mr. Montigny that there should be redress, and we should find out whether the Act applies to that particular section.

The WITNESS: I want to make another remark arising out of this. The safeguarding of moral right is the main feature of the revised Convention of Rome. To the praise of the Canadian Parliament, may I recall here that this enactment was first proposed by the House of Commons' Special Committee on Copyright in 1925, and was later adopted in 1928 by some fifty nations at the

Rome International Conference. Yet, moral right, under Article 6 bis of the Rome Convention and under clause 5 of our Bill, seems to be safeguarded only during the Copyright protection. May I be permitted to submit a few reasons why such moral right should be extended to the public domain, in order to make respected, without exacting a cent from the public or from the users, the works of the Old Masters, which are to-day multilated and distorted to a scandalous extent. I note from the evidence of yesterday that the music users complain that it is impossible to recognize a piece of music, literature or poetry, owing to it having been so much multilated or distorted. You have seen and I have seen such music as Ave Maria, La Traviata, Indian Song, and others put into fox-trots. I could take a page of Shakespeare, or of any other author, distort it and put my name on it. That is stealing. We look at those things from the point of view of education. We bring our children up in admiration of these masterpieces, and yet some people are able to take those works and completely or partially distort them with impunity.

By the Acting Chairman:

Q. Are not you going very very wide? We, as a committee, will take all this into account. You are making now the suggestion that there should be a restriction on the power of a man to make a re-arrangement or an arrangement of some piece of music, or some piece of poetry, or some other artistic work which is now part of the public domain, not protected at all, and your suggestion is that, notwithstanding the fact that it is part of the public domain, there should be something in this Bill which prevents an arrangement, we will call it a distortion. You call it a distortion. It might be a distortion or it might not be, but you say there should be something in this Bill preventing anyone from altering or stealing or making any new arrangement of this artistic work, but that is not covered by the Convention.—A. It is an infringement of the moral right.

Q. I know, but can we, as a national legislature, extend that? I do not think we can. I think it is beyond our power.

Mr. Chevrier: We can take his observation and we can discuss it.

Mr. Ernst: We can possibly make a recommendation, although we cannot make amendments.

By Mr. Irvine:

Q. Does the Convention go as far as that, Mr. de Montigny?—A. There is nothing to prevent that. This suggestion was adopted by the committee of 1925 without any objection. We submitted it to the Bureau at Berne, and it was received with high praise. The "moral right" came from this House in 1925, and was afterwards adopted.

The Acting Chairman: I know, but here is the point, and I think Mr. de Montigny will take that view too: I do not think we have any right. However, it is a good thing to have it down in the minutes. Do you agree with the leaving out of the words "the publication of" and making it read as it reads in Article 6 bis "the right to restrain any distortion, mutilation. . ." you agree with that.

The Witness: Since the Bureau of Berne have given their advice that the stipulations of the Convention should be embodied in the national law, in order to have any judicial effect, authors are naturally wishing that the clauses of our Canadian Bill correspond as closely as possible to the wording of the Art. 6 bis of the Rome Convention.

By the Acting Chairman:

Q. Now, what next?—A. Clause 6. This is a clause on which I have a few remarks to make with your permission. This clause is an answer, to some extent, to the persistent claims of authors, which are reiterated as the conclusion of the brief submitted on behalf of our Canadian Authors Association. Since the government, through the Honourable Secretary of State, has decided to adhere to the Rome Convention for the protection of literary and artistic works, and, therefore, to put our present Copyright Act in conformity with that Rome Convention, we are no doubt entitled, as we are primarily interested, to respectfully submit that, by such adherence, Canada has pledged herself, and is expressely bound, under several articles of that Revised Convention to provide for the means of redress and remedies, which are prescribed under the Convention, to cover specific cases of infringement. So I submit this, that there is nothing, in our present Act, to cover the special cases, and that is why the Convention says to the National country, you have to provide for such and such cases, which is not already covered.

Q. That is the point you have already made.—A. Yes.

By Mr. Chevrier:

Q. Could you briefly state what those requirements are? Just mention them if you have them in your mind.—A. We have got them in the Convention. Article 2 of the Revised Convention of Berne,—paragraphs 4 and 5 Article 2. I will read:—

> (3) The countries of the Union shall be bound to make provision for protection of the above mentioned works.

By Hon. Mr. Rinfret:

Q. Of course, that is very general, Mr. Montigny. Could you point out some other section beside that?—A. Article 3:—

> The present Convention shall apply to photographic works and to works produced by a process analgist to photography. The countries of the Union shall be bound to make provision for their protection.

By the Acting Chairman:

Q. Would you answer me this, Mr. Montigny: Is it your idea that section 6 providing for assessment of damages is not an adequate compliance with the obligation created by the Convention.—A. I am positively sure to the contrary, especially in view of the experence I have had in the courts. I have appeared before the courts for the last twenty-five years, and I am safe in saying that we have no recourse under the copyright law as it stands to-day.

By Hon. Mr. Rinfret:

Q. Before you leave that, Mr. Montigny. You referred to paragraph 3 of Article 2, and Article 3 of the Rome Convention. Surely you are not through in indicating the different sections in that Convention which cover your case.—A. For the remedies.

Q. Binding the different countries to establish recourse and redress. I do not want the committee to understand that you have exhausted the list of articles covering that case.—A. Oh, no. The Chairman asked me to proceed.

Q. There are articles all through the Convention.—A. Yes.

The Acting Chairman: Well, it would naturally follow:

By Mr. Chevrier:

Q. Would you follow up what you had started on. You say you are not protected. Are there any cases where you are not protected.—A. We have never had any recourse. We appear before the court so many times, and each time the judge says you have to prove the damages. That kind of damages is impossible to prove. In every instance, court asks us to prove damages which cannot be proved.

The Acting Chairman: Well, we can go into that.

By Hon. Mr. Rinfret:

Q. Can you tell us what redress exists in other countries? Take the United States, for instance.

By the Acting Chairman:

Q. It all comes back to what I said, that in your opinion the redress in a civil action for damages is inadequate.—A. Yes.

Q. And you want the committee to consider whether or not, in view of what you stated, that is an adequate provision and an adequate compliance with the terms and spirit of the Convention.—A. We submit it does not cover specific cases. Infringers are sent to jail in the United States. There is a minimum sum for damages fixed by law in the United States. The amount fixed for damages in the case of infringeemnt of a dramatic work, for the first performance is $100, and $50 for each subsequent performance. I have in mind a case in Montreal, the infringement of a play that took place for nearly three years, three weeks every year, where they made thousands and thousands of dollars out of it. We were not able to prove the damages. Action was taken under the Criminal Code and the infringer was fined to $10. In France the author is awarded the whole proceeds as a partial indemnity in case of infringement and moreover the infringer may be condemned to jail.

By Hon. Mr. Rinfret:

Q. In the United States, I understand, the costs are paid.—A. Yes and reasonable fees for attorneys are allowed by the court, plus all legal costs.

By Mr. Chevrier:

Q. As I understand your difficulty now, you say that all it amounts to is a fine being paid to the State.—A. Yes, and we pay all the costs. As a consequence, infringement and plagiarism are a common practice, especially in the province of Quebec.

By the Acting Chairman:

Q. Is there any other section you want to deal with, Mr. de Montigny.

By Mr. Chevrier:

Q. Have you any objection to section 8.—A. I have nothing to say on section 8.

By the Chairman:

Q. Then we come to one of the disputed things, No. 9.—A. I have nothing to say against that. I am perfectly satisfied that the title of every author be made available to the user. I approve of No. 9.

By Hon. Mr. Rinfret:

Q. What about No. 10.—A. No. 10 raises some remarks.

By Mr. Chevrier:

Q. A lot has been made about No. 9, a monopoly for the collection of your rights. Are you in favour of a monopoly.—A. That is No. 10. The Convention provides for this. Take article 17. This is a saving clause of Police Measures. There is a special clause to cover all that.

By Hon. Mr. Rinfret:

Q. And in such cases you are in favour of the State exercising a control.—A. It is a common law affair.

The Acting Chairman: Section 17, of course, does not give any right. It only preserves the right of the legislation to pass monopolistic legislation. Have you anything else to say about section 10.—A. Yes, I have a little more to say. I am under the impression that the suggestion has been made to cover special cases, against which some Canadian music users claim that they exercise a monopoly. But I know perfectly well that if that clause 10 is adopted, many other societies of authors, against which no one is complaining, which are rendering appreciative services to the Canadian public, will be put absolutely out of business; it will be impossible for them to operate, and they will have to withdraw altogether, because they will feel that their operation is illegal, under this new clause.

Q. Could that be got over by limiting the extent of the clause? It covers the performance of literary, dramatic, musical or artistic work. Would your difficulty be met by changing the wording of that so as to limit its scope.—A. Yes. I think there is some clerical error in this. We cannot perform a literary work; we cannot perform an artistic work. There is some little error in this that can be corrected.

Q. There are some works which are usually called artistic works, and there are some literary works which fall within the terms of this statute which are capable of performance.—A. Clause 10 will result in putting every association under the obligation of filing complete lists of all the works in respect of which they claim authority to give performing rights.

By Mr. Chevrier:

Q. You mentioned associations that were rendering appreciative services to the authors. They are not, so far as I can understand it, incorporated societies with statutory rights. They are just societies or associations with no legal existence, and you say that, if these words "association society or company" were left in the section as it is, that it would put out of business those voluntary associations or voluntary societies made up by grouping together of authors but not incorporated. Would it meet your purpose if that were taken out of section 10? Maybe you do not want to answer just now? It might be considered where you simply state, any society, or any incorporated society or any company which carries on in Canada either as principal or agent but which has statutory rights, then these statutory rights could be limited in some way or other probably. But I thought your point was that these voluntary associations was a grouping together of a few authors, which would be put out of business because of the inability to comply with section 10 as it stands. If that only applied to those incorporated societies would that meet your view.—A. No. Take, for instance, the Société des Gens des Lettres, the Société des Auteurs dramatiques, in Paris, which are supplying plays and literature, especially in the Province of Quebec. They are asked for plays. They say "will you supply us"; the answer is "yes," and then they are asked "what is your rate" and they are told you have to pay $2 per act and per performance. They supply those plays, but under this clause, if I understand it right, this society over there will not be entitled to supply those plays and collect fees or even bring law suit for infringement, unless they file complete lists, which I claim is utterly impossible.

We never can say that these lists are complete, because the moment we file with the department what we consider is a complete list, new works will be coming over. We would be filing how many thousands of plays, I do not know. These societies state that they are in an impossible situation. If there is an infringement, they cannot use the law because they are not able to satisfy this clause.

By the Chairman:

Q. Would it meet with your objection if that clause were so modified as not to apply to voluntary agreements made between authors.—A. Certainly.

Mr. BURY: Still, even so, a voluntary agreement made between 99 percent of the authors might still become monopolistic, just as much as the one that was not voluntary. The statutory condition that Mr. Chevrier mentions I do not think touches the thing. Mr. de Montigny says that there is a continual flow of new works coming on to the market. Supposing there was a provision in the Act that it only applied to a work if it was filed within six months of its production.

The WITNESS: The law will always oblige that society to file those numerous works.

By Mr. Bury:

Q. What I am getting at is this, that if there was a filing for six months then the fact that a work which had been produced in May and was not filed until six months later, till November, would not preclude you from suing for an infringement in the intervening six months.—A. If an infringement occurred before the expiration of the date for the filing, would I be entitled to sue for that infringement?

Q. Yes.—A. Yes.

Q. I think that is reasonable.—A. Yes. That is reasonable.

Q. I am only suggesting it, but it would meet that objection.—A. We claim this, however, that it does not seem to be feasible. If some other means could be devised to safeguard those individual rights, we certainly would be in favour of considering it. A man cannot look after his own rights by himself. He has to have an agent, a society, to whom he can say "look after my business while I am writing. I want to produce something, and I do not want to have to bother with the marketing of my works."

By Hon. Mr. Rinfret:

Q. Do you take the stand that you represent every author separately, or do you represent a society, or what.—A. I declared that at the beginning, Mr. Rinfret. My first concern is as a Canadian author to safeguard myself, connected with other Canadian authors, seeking to do as much good as I can for the authors. I have always been very careful not to express any opinion, but facts.

Mr. IRVINE: May I suggest that you go a little slower.

The WITNESS: I am perfectly sure, from the advice I have, that this clause 10 is contrary to the spirit of the Convention.

The CHAIRMAN: Well, that is a matter of opinion.

By Mr. Bury:

Q. Have you anything else on 10?—A. No, not on clause 10.

Q. Have you anything on 11, that paragraph about free use of works in churches, for educational purposes.—A. I understand, Mr. Chairman, after looking over the evidence, that this clause is liable to be modified.

Q. Still, you should address yourself to it as it is.—A. Again I won't express an opinion. But I may be permitted to say this, that yesterday a very distinguished priest of Ottawa here came to my office. He was just back from Rome on his first visit after being a year away. I said, you have come in at a very bad time because we are terribly busy with the Copyright Act and other things. However, I said, as a priest look at this, what do you think about this clause 11. Remember this was a priest, a master in cannon law. Well, he said I do not see how anyone can be forced to be charitable, because charity would lose its value. I would not like to give the name of that priest, but I can privately give it to any member of the committee. However, those are exactly my sentiments.

By Mr. Chevrier:

Q. Is that all you have to say with regard to section 11.—A. No. I want to say that if that clause is to remain there,—there is a provision already in the Copyright Act, section 26, which prevents any one from bringing action against anybody performing music, or a play "for private profit." In no way have we ever been able to prove there is "private profit." The word "private" simply precludes us from using that section 26.

The CHAIRMAN: Mr. de Montigny, you are giving expression to legal opinions which certainly are not very effective with me.

The WITNESS: We have judgments, Mr. Chairman.

By Mr. Rinfret:

Q. What abuses do you think might issue from clause 11?—A. I can quote, for instance one case. A gentleman, an author, writes to me:

> I read in "L'Action Catholique" de Quebec, that no longer will fees be claimed for performance given for the benefit of churches. Don't lose sight of the fact that ninety-five per cent of performances given in this province are given for the benefit of churches. I put on five years ago, a slight-of-hand performance by Donat Company at a small village. Our percentage was to be fifty-fifty of the receipts. That performance was given for the benefit of the church. When the show was over we each took our part of the profits and the curé counting his money said "I have just enough to pay for fifteen days (holiday) in Montreal."

By the Acting Chairman:

Q. Your point is this, that that section as it stands there is open to abuse? —A. To abuses.

Q. Do you know of your own knowledge—what you have read is only hearsay—do you know of your own knowledge of cases where it has been abused in the way in which you state?—A. Yes. I may add that very often we are asked—the authors are asked to give authority for certain religious, non-religious, or general amateur affairs—to give plays for nothing. I have a concrete case. We are willing to do it. The Society of Ste. Marie, near Quebec, was asked to play something and Mr. Emile Marsac, the author, agreed. I have a letter here. The principle is that the author has the right to control his work. I have written many plays myself. I have always given my work to the charities, to amateurs and to the church. I have often given my plays, provided they asked me to do so. I have even written plays for the C.P.R.

By the Acting Chairman:

Q. The arrangement you have suggested, namely, that where a church, or some other organization working for charity, applies to your association for leave to put on a certain play, or to perform a certain piece of music free,

is that the association says, "write to the author." Is that the common attitude of these agency associations?—A. I beg your pardon, Mr. Chairman. The society does not say, "write to the author; if you are desirous of being free from paying fees, only the author can give you this permission." The author says, "there is my play; you have a right to play it for so much."

Q. Is that the common course followed by those Performing Right Societies who act as agents for the author ? In other words, do they say to the applicant "we have no objection?"—A. I do not want to get mixed up with any of the Performing Right Societies, because I have nothing to do with it. I am speaking of the Société des Auteurs Dramatiques, of Paris.

Q. We are dealing with Performing Right Societies. Does a society or church have the right to perform?—A. Yes. It might be considered as a Performing Right Society.

Mr. CHEVRIER: You are dealing with that Society?

By the Acting Chairman:

Q. What I am getting at is this: is it the common practice where a church or charitable organization applies to the Performing Right Society, or any society, that is performing the work of a performing right society for leave to use a work or a certain play or a piece of music—is it the general practice of those societies to say, "we cannot dispense with these fees, but if you write to the author you may get permission?"—A. This society I am dealing with.

Q. What about the other societies? It may be true of your society, but not others?—A. I cannot speak for the others.

By Mr. Irvine:

Q. Has the church ever been required to make application? Have they not always had the liberty to use these things in the manner described?—A. No. The church, as in the case of a common citizen who wants to get something, has to pay for it or buy it or beg it; but in general practice they have to pay for everything they use.

By the Acting Chairman:

Q. My reason for asking this question, Mr. de Montigny, is this: are there any similar societies in which in the case of works of authors there is not a book-keeping account kept of the proceeds of each author's performing rights, but the authors are classified and they pool?—A. No, not that I know of, our society collects on royalties.

The CHAIRMAN: What is your society?

The WITNESS: The Société des Auteurs Dramatiques, of Paris. The collecting agent is Mr. Coutlée, of Montreal.

Mr. BURY: Every author has a separate account?

The WITNESS: Surely.

The CHAIRMAN: It is perfectly clear that, in the case of the French Society, the author or composer does not assign his copyright interests to that society.

The WITNESS: It is a collecting society.

The CHAIRMAN: It is a society, unincorporated, which, in a general way, looks after the interests of the individual members?

The WITNESS: Absolutely.

Mr. BURY: As the agent for the individual member?

The CHAIRMAN: No, not always as agent of the individual.

Mr. BURY: My point is this: I have been informed, and I would like to be corrected if I am wrong, that there are associations of the nature I have been speaking of, in which the authors of a certain class A, B, C, and D, pool, and then the society does not deal with the individual authors.

The CHAIRMAN: We have evidence of that, Mr. Bury.

The WITNESS: That does not exist in the society I am talking about.

By the Chairman:

Q. That is simply a volunteer society which does not control or dispose of individual rights?—A. Oh, no.

Mr. BURY: I understand that.

The WITNESS: It is an association, a society.

Mr. CHEVRIER: That is why you are fearful of this?

The WITNESS: Yes. There are societies; there are groups—

By the Chairman:

Q. It does not take in this business of "acquiring, assigning, granting or licensing copyrights"?—A. It gives a permit on behalf of the authors, on behalf of Mr. So and So. That is why I am afraid that it will permit to be played or performed.

Q. I discussed this in Paris. I understood that this association was simply an association of authors; that it did not have any vested title to the authors' works, or any copyright interest therein; that it acted as a general agent. If you applied to them they usually applied to the author to fix his rate?—A. They have a general organization. If they permit the performance of a play they give permission on behalf of the author. That is why I am afraid of this law.

By Mr. Bury:

Q. Then they are a kind of agent for the author. Now, have you anything else to say?—A. I think we are about at the end of the Bill.

Mr. CHEVRIER: Is there anything on number 12?

Mr. BURY: There is nothing to that.

Mr. CHEVRIER: What about sections 13 and 14?

Mr. IRVINE: Why should not there be the same objection to 12 as there is to 11?

Mr. BURY: Section 12 is there simply because there has always been a statutory right for the library to have a copy.

Mr. IRVINE: They have to do it.

Mr. BURY: It is a very common thing. It is done all over the Old Country. Every book entered in Stationer's Hall must be sent to the University Libraries.

Hon. Mr. RINFRET: With regard to section 14, what is your experience before the Court? Do you think you would be entitled to invoke before a Court an article of the Convention itself, or must it be reproduced in order that you may be able to use it before the Court?

The CHAIRMAN: I object to that question. It is purely a legal question. It is not a question that this witness is entitled to answer.

Hon. Mr. RINFRET: It is an important question, but I will leave it until we discuss the question.

The CHAIRMAN: There was another witness, a gentleman from the Toronto National Exhibition, who was expected to be present this morning.

Witness retired.

Mr. COOPER: I am sorry to say that Mr. Waters is ill and will not be able to come down. I told him of the statements which were made by Mr. Robertson and Mr. Martin, and he confirmed those statements and said that just as soon as he was well he would bring the information down to Ottawa and give it to the members of the Committee, if he might be allowed to do so.

The CHAIRMAN: I understand that Mr. Honeywell, Barrister and Advocate of Ottawa, has asked permission to make a statement.

Mr. HONEYWELL: No, Sir. I just notified the Chairman that I had been asked to have a watching brief here for the independent theatres. I think that section of the Act has been so fully dealt with, and the Committee have been so seized of the interests of these people that I do not think it is necessary at the present time to deal with it.

Mr. MARTIN: Mr. Chairman, may I make this statement. Before the close of the session yesterday, one of the legal departments of the Canadian Pacific Railway read a letter into the report outlining the position of that company with reference to the Bill. I have been asked by the Canadian National Railways to state to the Committee that their position with reference to the Bill is exactly the same as was stated in the letter from the Canadian Pacific Railway.

The CHAIRMAN: I think among the numerous letters which we have received we have a letter to that effect also. I am glad to have it.

Mr. MARTIN: I would like to make that statement, and if you have no objection I would like to have it appear on the records.

The CHAIRMAN: No, there is no objection. I reserved the right to Mr. Jamieson to give evidence on matters which we have not already dealt with. I will not swear you again, Mr. Jamieson, you are still giving evidence under oath.

Mr. JAMIESON, recalled.

The WITNESS: First of all, Sir, I file a copy of an indenture made 15th February, 1926, between the Performing Right Society of London, England, and the Canadian Performing Right Society, Limited, by which the assignor, which is the British Society, assigned to the Canadian Society the right of performance in Canada of the music of each and every song and musical work at that time in its repertoire.

(Indenture filed, marked Exhibit "AA1".)

The CHAIRMAN: We will take that under consideration.

The WITNESS: Secondly, I file a copy of a right to licence dated May 21st, 1930, between the American Society of Composers, Authors and Publishers, and the Canadian Performing Right Society, Limited.

(Document filed, marked Exhibit "AA2".)

The WITNESS: Thirdly, I file a similar copy of a right to licence dated 24th day of July, 1930, between the Performing Right Society, Limited, of London, England, and the Canadian Performing Right Society, Limited, Toronto

(Document filed, marked Exhibit "AA3".)

The CHAIRMAN: Regarding the copy of indenture of the 15th of February, 1926, that is a general assignment to your company?

The WITNESS: Yes. A general assignment of the works in the repertoire of the British Society in February, 1926, but it does not cover works which came into the repertoire of the British Society after February, 1926. The works which came after February, 1926, came within the third document filed, that of July 24, 1930.

Mr. ANGLIN: I think the witness is in error in one respect. The assignment itself purports to cover future sales as well as existing.

Mr. BURY: The 1926 assignment purports to cover existing as well as future.

The CHAIRMAN: The agreement of the 24th July, 1930, deals in more detail with terms and conditions of the assignment with regard to the apportionment of receipts and matters of that kind.

Mr. ANGLIN: I do not want a misapprehension.

The CHAIRMAN: These three documents which you have filed cover, first, an agreement of May 21, 1930, between your association and the American Society of Composers, Authors and Publishers, and then in addition to that there are two agreements between your company and the Performing Right Society of Great Britain, one of February 15, 1926, and the other of July 24, 1930?

The WITNESS: Yes.

The CHAIRMAN: These two agreements cover all terms governing your relations with the American Society, on the one hand, and with the English Society on the other?

The WITNESS: Not altogether, sir. I have two other forms to file. First, form A, which is used for the assignment of Canadian performing rights from authors, composers and publishers, to either the British Society or the American Society.

The CHAIRMAN: That is an assignment by the Canadian Performing Right Society of such interests as are vested in it by Canadian authors?

The WITNESS: No, sir. These are individual assignments by the members of the British and American Societies to the British and American Societies, respectively. With that form must be read form B, which is an assignment of the same individual rights and works from the British or American Societies to the Canadian society. It makes the chain of title complete.

(Form B filed marked exhibit "AA4").

(Form A filed marked exhibit "AA5").

The CHAIRMAN: This form which has been marked AA5 for purposes of identification, is the form of assignment from an author and composer to your company?

The WITNESS: No, sir. May I make an explanation?

The CHAIRMAN: Just state the fact.

The WITNESS: The fact is that this is the form of an assignment from the author or composer to the American or British societies.

By the Chairman:

Q. Let us be clear about this. This is a form of assignment which is received from the author or composer in the United States by the American society?—A. Right.

Q. And the same form is used as an assignment from the British——A. Author.

Q. Or composer to the Performing Right Society of Great Britain.—A. Right.

Q. Do you obtain the same form of assignment in each case?—A. We are doing that now sir, having been enabled to take, under the present act,—

Q. Never mind. I am asking you are you doing that, that is all. I did not ask the reasons.—A. We are doing that on new works.

Q. On new works. Do you not take it with regard to works which are already copyrighted where you can obtain assignments from composer or author?—A. We are obtaining assignments of new works.

Q. Are you not obtaining them wherever you can from the British author or composer or English company?—9. No, we are not. I have tried to explain why we do not—

Q. I am not asking for an explanation.—A. I would like to make an explanation.

Q. You will have ample opportunity. I am simply trying to understand you— —A. You would understand it better sir, if I might make my explanation.

Q. This paper is marked "AA-4." It is a form of assignment from some company to the Canadian Performing Right Society. For what purpose do you use that form?—A. This form B is for the assignment to the Canadian society of the rights assigned to the American or the British societies by the authors, composers, or publishers under form A, to complete the chain of title to the Canadian society.

Q. This is a form of asignment from the American society to your company, or from the British society to your company?—A. Right. Now may I make my explanation?

Q. Wait a moment, I want to understand this first. These assignments are only for a term which expires on December 31, 1935. Do they all expire on the same date?—A. At the present time, yes; as explained by Mr. Hawkes yesterday, there is a five-year term.

Q. Now, I will hear your explanation.—A. Thank you sir. The explanation is that under the present section 40 of our Act, we are not able to maintain an action in court because millions of our works—millions of works contained in our repertoire, have been assigned for the most part to publishers in the first place, and to the British society in the second place, and to ourselves in the third place, in single documents, not in duplicate, and therefore are not available, not useful to us in maintaining an action in court in respect to infringement of those works.

Q. In view of the provision that they must be made in duplicate?—A. Yes, sir; and we are debarred in fact from court and not able to protect authors' works; therefore, we are now commencing to adapt ourselves—

Q. To the existing law?—A. To the existing law, and now are taking those assignmnets, "A" and "B" in duplicate, and now we are able in respect of new works to register them, and in due course to take an action against the infringers, and for the first time we hope to be able to protect our rights.

Q. Are there any other documents that you wish to produce?—A. No other documents at the moment. If I might very briefly reply to some of the statements made by Col. Coper in his evidence yesterday, I should be glad to do so.

On page 88 in filing the copy of a telegram from Mr. Nathanson—

Mr. BURY: That would be in Tuesday's evidence.

The WITNESS: Page 88, number 3 of the Proceedings, Tuesday. I refer to the telegram that Col. Cooper filed, and I object to the expression used, namely, "so-called Canadian Performing Rights Society", the inference being that we are not a Canadian Performing Right Society.

The CHAIRMAN: We are getting beyond mere verbiage of that kind. We know, and it is given in evidence, that the Canadian Performing Right Society is incorporated under the Canadian Companies Act by letters patent. That is all in the evidence.

The WITNESS: Not only that sir, but my point is, if I might make it, that the property we own is the Canadian performing rights—

Colonel COOPER: If there is any objection—

The CHAIRMAN: Please keep you seat.

The WITNESS: Now, Col. Cooper complained that he could not, was not able to find out who owns certain pieces of music and we claim that from the

list of members that we have filed, he is well able to find out who owns a piece of music he wishes to play.

The CHAIRMAN: That is not only Col. Cooper's complaint, the complaint is very widespread. The suggestion is that you should be prepared to file a list, or if that is too voluminous, you should be prepared to file a catalogue of your authors from which names of such pieces or such works as are not vested in you for the purpose of granting licences, should be eliminated. If it is so easy for you to ascertain the facts from your records, why should it not be equally easy for inquiring minds such as Col. Cooper's to ascertain the same facts by investigating the records at the Copyright office.

The WITNESS: I feel sir, that many of Col. Cooper's suggestions are frivolous, and simply made—

The CHAIRMAN: That may be so, that this is an objection which is frivolous, but it is widespread.

The WITNESS: Well sir, they are made simply to—

Q. To what?—A. They are made simply with a view to hampering us.

Q. Witness, so far as I am concerned—one does not realize one's prejudices I suppose, but, so far as I am concerned, I believe that I am absolutely free from prejudice against your society or your operations; but to me it seems essential that if you profess to be able to grant performing rights in respect of the works of 30,000 authors comprising 2,000,000 to 3,000,000 works in all, while we should not hamper you unduly in the preparation of those lists, yet if those lists are already printed and published by the publishers of the music, then you should be willing to reach some compromise with us whereby those catalogues containing those printed lists should be filed at the Copyright office where they may be available to the public.—A. We will do what we can in that direction.

Q. I am not asking you to do it, I am asking you why the law should not compel you to do it. What is the strong objection?—A. Well, in the first place, it has been proved in all other countries—

Q. I cannot accept your evidence as to what is proved in all other countries. Let us deal with your particular case; let us prove it here.—A. I am dealing with our particular case, and dealing with our repertoire, which is being operated in all other countries and no filing of lists is required.

Q. You might as well come to a committee of the House of Commons and say, because this law is not found in France, or that law is not found in Germany or some other land, or this law is not found in Yucatan that we should not adopt it here.—A. I do want to make this point, that this suggestion is not necessary because this list of ours does indicate what works we have.

Q. Why should you not file it in the public office?—A. I have filed a list of prices; we have circulated it throughout the country.

Q. I am not talking about what you circulate throughout the country, I am asking you what real objection there is to filing lists of your works in the Copyright office at Ottawa.—A. I submit it is a very simple and easy matter for the music user to look at the sheet of music and find out from that sheet of music the name of the author and the composer and the publisher, and look at our list of members, as well.

Q. He looks first at the publisher, and he knows, as you know, and I know, and as the evidence before this committee has substantiated that that publisher is also in many cases including in his published list music which is not copyrighted. Secondly, he sees the name of the author, but there is no biographical index to authors to show when the author was born, or when he died, or whether he is living, or whether the work comes within the public domain under the 50-year term. If you claim the right to impose royalties upon the people of Canada, why should you not state and assume responsibility for stating, by filing a list of publishers to which has been added their lists or copyright works,

so that the ordinary Canadian music user can apply to the Copyright office and ascertain the works concerning which he is compelled to deal with you, and in respect of what works you are entitled to claim royalties?

Mr. HAWKES: If I may suggest—

The CHAIRMAN: I am not asking you at all.

Mr. HAWKES: I should like an opportunity—

The CHAIRMAN: We are hearing this witness, and if you have anything to say we will hear you later.

Mr. HAWKES: I should like to, on that particular point.

The CHAIRMAN: You have now no right to interfere at all. Let the witness give his own explanation.?—A. Passing on to another point—

Q. Have you anything further to say about that?—A. No, nothing further to say on that point.

Q. No further reason or excuse to give why you should not file such a list? —A. Mr. Hawkes will reply to that point, sir; he will give evidence on that.

Q. You are the executive head of the Canadian Performing Right Society, and you profess your inability to give any excuse as to why you should not be compelled to file your lists at the copyright office here?—A. I have not confessed that inability. The thing could be done, but as has been stated already, it would be very troublesome, very laborious and an expensive matter, and we feel it is not in the interests of music users, because there are other ways, which, in practice, have worked out in the other countries. However, sir, we would be glad to consider it, to go into the question of filing a publisher's catalogue.

Q. That is the whole story with regard to your objections, so far as you are concerned?—A. Yes.

Q. Well then, proceed.—A. In regard to the tariffs under which we commenced to operate in this country in 1925, Col. Cooper made a statement that those tariffs covered only 25 per cent of the works then being performed in this country. That, I say, is open to question because we have made tests of that matter and we found a very great number of our 2,000,000 works was being performed in this country. However, the tariffs were very moderate. British tariffs were and are very moderate, and always have been.

Q. Since you are dealing with the question of tariffs, will you permit me to ask you another question?—A. Yes.

Q. I can understand the reasonableness of some of the objections made against filing a list of tariffs in respect to each particular work, but your tariffs, as I have examined them, are tariffs dealing with the performance of works on a large scale. You have 2,500,000 works. You place a tariff upon the use of all of these works by broadcasters, and fix your prices under certain conditions for the whole list. You have tariffs dealing with the performance of all of these works, which are musical compositions, by the hotels for the entertainment of their guests. You have another scale of tariffs, which you impose upon exhibitions and fairs, under certain conditions. Now, what objection is there to filing with the copyright office, your tariffs, such as you prepare, which are the working basis of your operations?—A. There is no objection, sir. We have filed with this committee those tariffs.

Q. Quite so, but I am dealing now with the Copyright Office.—A. And we are prepared to file those tariffs with the Copyright Office. But may I say this, sir, that this society does not admit, and objects to the statement that it has imposed those fees, or demanded them, and so on. We have always negotiated.

Q. That is a matter of discussion.—A. I know it is.

Q. I know telephone companies do not impose their fees. They may negotiate, but they are in such a position that the result of their negotiation is an imposition sometimes.—A. It is simply a question of colour.

Q. Let me go one step further and ask you why, if you are prepared to file those tariffs which are—I don't know exactly the word—wholesale classifications, but they are in the large, and they deal with not one work, nor with twenty works but 2,500,000 works, now, what reasonable objection can you urge against those tariffs being subject on complaint to the consideration and, if found exorbitant, to revision by some independent tribunal.—A. We take the very simple position, sir, that we wish to have the exclusive right of managing our own property and the right to freedom of contract, and we feel that that would work out and nobody would have anything to fear.

Q. Well, is there a combine or monopoly existing in Canada that does not register the same ground against any interference with the rates which they fix.—A. I canot answer that question, sir.

Q. Is it not that the usual grounds urged by monopolies, or by combines. —A. You may know that, sir, I do not.

Q. But that is your objection.—A. That is our objection. Colonel Cooper read into the record a letter dated October 10, 1931, at page 94, from myself to him, and reply of October 14. This correspondence dealt with the Musical Protective Society. He says that he had difficulties with us in these matters.

Q. Where is that.—A. Page 94, at the bottom. He says:

"I merely wished to show some of the difficulties which we have had."

I would point out, sir, that for six years all of these individual establishments, or associations of individual establishements had the opportunity to negotiate with us, and we asked them, by repeated circulars, letters and interviews, to do so and they declined. The Musical Protective Society is a society which has no property. It has no power in itself to contract, and it seems to be simply an association for the defence of these music users.

Q. Yes, quite so.—A. So there is very good reason, if I may so say, why we did not deal with that, in my opinion, is an irresponsible body.

Q. I see. Just allow me. For instance, I was impressed by what I heard when I was in Paris, and which was confirmed by Mr. de Montigny's evidence this morning, that in Europe associations do exist for the supervision of the rights of authors which have not the same large powers vested in them as the Performing Right Society of Canada has; but why should you, having a monopoly of 90 per cent of modern music, refuse to hold a conference with the representatives of the broadcasting companies, for instance, with regard to rates or conditions of the contract which you propose to make with broadcasting companies.—A. We have never refused, and in fact, we have had many interviews, as I have already said, with establishments.

Q. But we are dealing with this letter.—A. And associations and broadcasting companies.

Q. But you say now that your negotiations will only be conducted directly with the establishments requiring your licence. That is, you refuse to have a conference with the representatives of the broadcasting companies, for instance, but you restrict your negotiations to each individual member of the association which Colonel Cooper represented.—A. I do not think you can have heard very clearly, sir, what I said. It is that we have always been prepared to negotiate with individual establishments, or associations of individual establishments, who are prepared and able to enter into solemn contracts; but we were not prepared to deal with the Musical Protective Society because it was not so able to enter into contracts. It did not represent anybody. In fact, at the meeting referred to by Colonel Cooper in the office of Mr. Atkinson of the Toronto Daily Star, Colonel Cooper told us that he was not able to enter into contracts; the Musical Protective Society was not a property holding body. May I say this, that that organization was a "heads I win tails you lose" organization. We would have been very willing indeed to have sat in with an association, with anybody repre-

senting an association of these establishments, these music users, anybody who was authorized to contract with us. But they were not, the Musical Protective Society was not so authorized.

Q. In other words, under that condition then, the Canadian Pacific Railway can only negotiate with you when it sends an officer who is prepared there and then by authority from the Board of Directors to enter into a contract with you.—A. No. What I am objecting to is the nature and character of the Musical Protective Society. And I say this to make it clear, that if the Canadian National Railways, or the Canadian National Exhibition, and the Famous Players, and the fairs, and the C. P. R. if you like, had instructed the Musical Protective Society and given them authority to deal with us, we should have dealt with them. But the Musical Protective Society was not so authorized.

By Mr. Bury:

Q. You mean to say, that in your view, the Musical Protective Society had no authority from the authors to represent them in negotiations.

The CHAIRMAN: It is not "the authors."

By Mr. Bury:

Q. Well, the broadcasting companies, to represent them in the negotiations. —A. That was admitted to me by Colonel Cooper at that same meeting he referred to.

The CHAIRMAN: He presented evidence from those members of his association whom he may represent. Supposing a body of individuals get together, they have a perfect right to authorize a certain number or one of them to negotiate with you, for the purpose of coming to terms for some or all of them?—A. Quite so, and I think that you would meet those people in those circumstances provided you felt that they were acting in good faith and that they wished to contract; but our experience in six years with these same gentlemen, and we had many conferences with them throughout the six years, was that they did not wish to contract.

By Mr. Bury:

Q. But you say they could not contract. But could not they represent those who can, and negotiate with you to fix terms and then report to their principals.—A. They could, but we had no word from their principals, and they could show no word from their principals.

The CHAIRMAN: I think the attitude is shown anyway.

Mr. CHEVRIER: Would it not be a good thing to ask Colonel Cooper whether at that sitting he was clothed with such authority as to bind.

The CHAIRMAN: If Colonel Cooper wants to give any evidence with regard to that let him give it later.

The WITNESS: With the Toronto Daily Star and the Canadian National Railways we have had negotiations throughout a period of years, and both these and other organizations have said that they would not contract with us until we were placed under government regulation. We have always taken the position, sir——

By the Chairman:

Q. You say that there were some suggestions to that effect?—A. Yes, sir. I wish to make our position clear. It is this, that we were always perfectly ready to go to Ottawa and state our position, but we said to those music users: Why should you refuse to obey the law now such as it is.

Q. Were they disputing it? Did not the decision in the Performing Right Society case decide that they were not compelled by law to negotiate with you. —A. It said nothing of the sort, sir. It simply said we could not maintain an action in court.

Q. That is quite so, and if you had no legal interests which you could maintain in court, why should they negotiate with you?—A. We had property that was given to us by the government.

Q. You were unable to compel payment to you of royalties, or charges of any kind under the law?—A. Why, as one or two organizations said, for instance, the T. Eaton Co. has said that they would not take advantage of a technicality by using your property, and they paid for it.

Q. Why, in the Province of Quebec, in which I live, there are a score of companies manufacturing intoxicating liquors from day to day, and why should I negotiate with them for the purpose of purchasing intoxicating liquors, if under the law of the Province they cannot lawfully deliver or lawfully enforce payment or compensation.—A. Well, I may have very, very peculiar views on the matter, sir, but, speaking for myself, I would say that I am perfectly willing to pay a fair and not unreasonable price for another man's property even if he is by some technicality of law debarred from enforcing his right.

Q. Quite so. Do they not attach to their refusal to pay a demand for regulation, that is, as I understand their position, they think that, in case a difference arises with you as to what is a proper compensation, there should be an independent tribunal, by agreement for arbitration or otherwise, to which an appeal could be made to determine whether your demands are reasonable?—A. Well, Mr. Atkinson admitted to me that our tariffs—not demands, our tariffs—were reasonable, and he said it was simply a matter of principle with him, that he would not negotiate with us until we were under government regulation. I said, pay those reasonable tariffs meantime and let us settle the other question later, but they refused.

Q. Just one moment. Is it not a fact—I do not wish to submit the whole record—but is it not a fact that in the evidence before the committee in the British House of Commons it was shown that your British Performing Rights Society had entered into contracts for short terms, and at the expiration of those contracts higher rates were demanded, which, in many cases, were regarded by at least the users as exorbitant.—A. Well, sir, there were some increases asked for by the British Society, but those increases were asked for ony after there had been very considerable accession to the membership for one thing, and only after there had been accessions of many other affiliated European societies.

Q. That to my mind represents a valid consideration in support of increasing your royalties and charges, but is not conclusive as to whether the increases which you demanded under those circumstances, you holding a monopoly, should not be submitted, in case of dispute, to some independent tribunal or to arbitration.—A. As Mr. Hawkes could show you in detail, he having knowledge of the operation of the British Society, those so-called demands were merely the ideas of the British Society as to the increased value of their repertoire.

Q. Why do you refuse really to submit your prices to arbitration, or to the determination of an independent tribunal? I am not here to say that a single charge you ever levied is excessive. But you have a monopoly of 90 per cent of modern music, and in case of dispute, your views not being accepted by the music user, why should there not be some independent tribunal to which you, as a monopolist with 90 per cent of all modern works in your control, should submit your charges.

By Mr. Bury:

Q. Is not the position this, that just because your society—assuming it is a fact—has never over-charged and, in your opinion, never will over-charge, that,

therefore, there should be no statutory overriding authority to regulate or prevent over charges by your successors or assigns, or anybody else that may come in the future, is not that it.—A. Well, the situation—

Q. I mean to say, I put it up to you, is it an answer that because a particular association at a particular time up to the present time has never abused its tremendous powers, is that a reason why there should be no statutory limiting of these powers—A. That is a fair reason, sir, yes. And I say that we have also a reason, because we wish to retain our right to freedom of contract.

Q. Well, but everybody wants that.—A. Because we do not know that these rates to be fixed would be fair and reasonable.

Q. I know, but then on the other hand neither do the people of Canada know that the rates you propose to fix would be fair and reasonable. It cuts both ways. —A. Music users do, and they are very powerful bodies and well able to look after themselves. However, we are subject to the law of supply and demand.

The CHAIRMAN: That has been an issue, I am afraid, in Canada for many years.

By Mr. Irvine:

Q. Apart from the fact that you do not like to have your prices supervised by any authority, which may affect your dignity somewhat, do you anticipate any real trouble otherwise.—A. We do feel this: that during the past six years there has been stirred up against this society a lot of antagonism, and that antagonism has found expression, might I say, public expression, in this proposed Bill. There is a very considerable demand throughout the country that we should be regulated. That has been stirred up by the music users, and I submit that when our tariffs came before some governing body that same thing would go on and opposition to us would be stirred up. We might be misrepresented and we have very little, in fact we have no political influence in this country; but the music users have a great deal, and they have used it.

By Mr. Bury:

Q. Do you not think the antagonism and suspicion to which you refer might be allayed and removed if the provision mentioned was enacted and the danger of excessive charges removed altogether? Don't you think that would do more than anything else to allay the source of danger.—A. Well, I am afraid I am not able to make any suggestion on that, sir.

By the Chairman:

Q. Are you dealing with us with perfect frankness when you say that you are not able to make any suggestion? We would like to have some suggestion from you. This committee, if I understand the tenor of the views entertained by it, are asking you for some suggestion by way of compromise which would be fair to you.—A. Well, sir, we appreciate very much what you say, and I shall discuss the matter with my associates.

By Mr. Chevrier:

Q. When could you let us have the benefit of that? We cannot hold this committee open indefinitely. I am not saying that in any hostile way.—A. You see, we have interests in European countries, and they have taken the position that they object to this as not being in accordance with the convention.

Q. The only point I wanted to make was, in view of what you said. I would not want to form an opinion without having had the benefit of that suggestion, but if it is going to take a long time in coming, we may have to do something without the benefit of that suggestion.—A. Well, I have no suggestion in my mind, but if anything should occur to me—I am not at all hopeful—I shall be glad to place it before the committee.

Hon. Mr. RINFRET: I understood the witness to say a minute ago that he considered this Bill was an expression of antagonism towards the company he represents. Did I understand the witness properly.

The WITNESS: Yes.

Hon. Mr. RINFRET: Well, I am not speaking for the government, but as a member of this committee I certainly say I cannot admit that.

Mr. IRVINE: What is that.

Hon. Mr. RINFRET: I understood the witness to say that he considered that for a number of years antagonism had been accumulated against the company he represents, and that this Bill was an expression of said antagonism.

The WITNESS: Perhaps antagonism was an unfortunate word, but there has been a strong demand throughout the country that we should be kept in a box, that is, section 40, or regulated, simply because they do not wish to pay our fees.

Hon. Mr. RINFRET: Well, I did not want to let that pass unnoticed, that is all.

The WITNESS: That is so.

The CHAIRMAN: I would like to refer for just one moment to another matter. I tried to find the evidence a moment ago, but I was unable to find it. In the evidence given by a representative, as I understand, of the Performing Rights Society, on the 12th March, 1930, before the British Committee, this statement is made with respect to the English Society:

> The composer or author assigns his right in all his work, the rights invested in him, or which he shall thereafter acquire, to the society for the period of his membership. If a case arose where we have to take action in regard to that particular assignor's rights, we should then go into the matter, and see the title is in order before advancing a claim, but the assignment itself is in general terms. It is an omnium-gatherum assignment—a general assignment. The assignment is there, and it speaks for itself.

The assignment having been handed in then the witness proceeds:

"They" that is, the authors who make this assignment to your company, the Performing Rights Society:

> They prefer to vest the society with the right of control and not actually to assign the performing rights. It is a technical matter: it was decided that it was sufficient; and since that time in cases where the publisher has not done it, any action which has to be taken has to be taken, of course, in the publisher's name, if he is the owner of the copyright.

That is the English practice. Then it goes on to say:

> The composer of his own free will joins this society which is, for all practical purposes, a trade union of publishers, authors and composers.

That is the description given of your society. Now, that trade union of publishers, authors and composers, according to your statement, controls 90 per cent of the modern music and, as you frankly admit, there is a widesspread demand in this country that such a union, combine or monopoly, whatever you call it—I do not wish by the use of those words to appear to criticize or condemn —should be subject to regulation, and we will be very pleased indeed—I speak I think, for all this committee—to receive from you any practical suggestion whereby some reasonable regulations could be made effective so as to appease the public opinion which finds expression, to a certain extent, in this Bill.

The WITNES: I won't take up the time of the committee, sir, but I simply say that in our memorandum C page 9, we have replied to that charge of monopoly.

By the Chairman:

Q. I know you have replied, but you have made no practical suggestion, as I understand it.—A. Quite so. And, incidentally, may I mention that the courts in England have found that there is no monopoly or trade union in the British Society.

Q. Well, I can hardly accept that.—A. I can file the judgments.

Q. I do say this, that a committee of the House of Commons, who thoroughly investigated your company in the way no court has ever done expressed a contrary opinion.—A. I can file the judgments of the Courts of England.

Mr. BURY: What you mean is this, I take it, that they found you have not abused the monopoly. They could hardly file against the existence of a monopoly, but they are two different things. A monopoly actually exists. They surely could not find a monopoly did not exist, but they may have found—I do not know I have not read their findings—that you did not abuse it.

The WITNESS: May I just read from this judgment:

> It is not unimportant to observe that the exclusive right of "performing a musical work conferred by the Copyright Act, 1911, upon the author or publisher of such work is a peculiar right of property. It is not like ordinary subjects of commerce which may be produced by any manufacturer where the public are interested that the prices should be regulated by fair competition in the open market and not by a combination of manufacturers who maintain prices at an artificial level. It is essentially a privilege or monopoly right conferred by statute to encourage invention and thereby to benefit the public by addition to its stock of original works. The value of the right depends upon the effective prevention of its infringement by unauthorized persons. A single author or publisher is greatly handicapped in the protection of such a right. He has at best but imperfect means of discovering acts of piracy, and their suppression, if they are discovered, by action in Court may involve him in pecuniary expenditure which he cannot face. A combination of authors and publishers is therefore almost a necessity for the reasonable enjoyment of such rights.

I have quoted from the judgment of Lord Hunter, delivered on 7th December 1921, in an action brought by the Performing Right Society against the Edinburgh Corporation and others, (1922 S.C. 165).

Mr. BURY: That does not give the point. That simply states you have got a monopoly of monopolies. Every copyright is in itself a monopoly, and you have got a monopoly of monopolies.

The CHAIRMAN: I am simply speaking for myself, but I think I know something of the tenor of the views of this committee, and we are disposed to accept your suggestion that by such association or a co-operation among authors and composers and owners of copyright in such musical works may be very very beneficial, may be very advantageous to such authors, composers and publishers, but this judgment emphatically states that you are a monopoly.—A. No Sir. It says we have the copyright, I think.

Q. This is essentially a privilege or monopoly right conferred by statute?—A. It is a copyright.

Q. Quite so. It is essentially a privilege or monopoly right conferred by statute?—A. On one work.

Q. It is a monopoly or privilege conferred by statute upon an individual owner or author?—A. Right.

Q. But you—your company is a super-monopoly. In your company—thirty thousand men have joined together and vested in your company the right to deal for the whole thirty-thousand, so that when, in the ordinary course,

a broadcasting company approaches you, you say, "our terms for the use of the works to the number of two and a half million or three million of these thirty thousand authors are granted to you wholesale for a certain price which we fix." Now, that is new. That super-monopoly or combination which you represent is a combination of two million five hundred thousand little monopolies which are created by statute. We do not want to interfere with the author, we do not want to prejudice the author; but we do desire to arrive at some mode or method by which we can regulate this super-monopoly of performing rights which, by virtue of an international combination, is not found in any other trade?—A. We appreciate, Sir, all that you have said; but let me make one point: we must associate in order to protect.

Q. The evidence given by the young lady yesterday, Miss Sillcox, tended to establish that. I thought it was very helpful. Is there anything further? —A. I just wish to correct, briefly, one or two statements of fact. Mr. Cooper on page 96 quoted from the C.E.A. Report—that is the Cinematograph Exhibitors Association of Great Britain—that the society had asked for an increase of 600 per cent. The fact is that the society was given an increase of 149 per cent. I just wish to place the facts on the record.

Q. Now, is that something within your own knowledge?—A. Yes, Sir, absolutely; I would say further that there are three thousand theatres in that association and that the average fee—the average of the increased fee is ten pounds per annum, fifty dollars. The British system is to introduce a greater measure of grading. In this country the American practice applies; that is, a flat rate per seat; but in Britain they introduced not only the seat factor but also the value of the seats, so that there is, perhaps, a greater charge on the largest and wealthiest concerns, and a smaller one on the little fellow. And I will say this, Sir, that the largest maximum fee of £312 is a mis-statement—that the society gets only £200 from the largest.

Q. The mere statement as to what was alleged to have been charged as stated in the Cinematographic Weekly of March 20, 1930, did not affect my mind at all except that it referred to an increase. The arguments which you used would appeal to me very strongly if I were a tribunal sitting to decide as to whether you were justified in making that increase, but your answer does not approach the critical question as to whether such a tribunal should not be established?—A. Well, Sir, but I have the right to answer this statement that we have demanded these fees. I may simply say that this large fee amounts to only $4 a day on a house capacity value of $6,000 a day.

Q. That would appeal to me very much if I were sitting as a tribunal.

Hon. Mr. RINFRET: There is nothing in the Act to prevent the society from making it higher.

The CHAIRMAN: Nothing at all. Now, have you any further evidence?

The WITNESS: Yes, sir; one or two points—one point—I think, regarding Mr. Blake Robertson. Mr. Blake Robertson—I cannot find it in the evidence—but I made note of it yesterday, said that this society offered our general licence all or nothing. I wish to say that that is not the case, and I wish to say that on the 21st of April, 1927, we offered the Canadian National Railways a unit charge contract so much per work. On the 7th of May, 1927, we offered a similar unit charge contract per work to the Canada Steamships Company. On the 30th of October, 1930, over a year ago, we offered the same kind of contract to the Canadian Pacific Railway, and we have always been prepared to give such a contract wherever it was wanted.

The CHAIRMAN: I am glad to hear that; but, of course, the general tariff as submitted in the case indicates that you are urging a general, all-comprehensive contract covering all the works you control. But if you can offer to

the C.N.R. one day a unit contract, to the C.P.R. another day a unit contract, and to the Canada Steamship Lines on another day a unit contract, why are you unwilling to file your unit contract prices with the Copyright office?

The WITNESS: We are unwilling to file unit contract prices of three million works, but we do say to the Canada Steamships and others, "we will offer you a price of so much per minute of performance of any or our works," so that they will only pay us for what they actually use.

The CHAIRMAN: Now, we are getting back. I misunderstood you as to unit prices. Now, what I understood is that you varied your offer to them to this extent that they can perform any or all of your two million five hundred thousand works, but that the compensation which they would have to pay would be fixed on the basis of the time which they consumed in the performance of the works selected by them?

The WITNESS: Yes, that was a practical method of working out that matter. There is just one matter I would like to correct in my own evidence. It is not an error in effect.

The CHAIRMAN: What number of the record are you speaking of?

The WITNESS: Number two. On page twenty-one I said—first of all there is no error, I think, in the reporting. I said there were ten thousand shares of no par value. Yes, that is correctly stated. You asked me, "well, how much has been issued"? I said, "we have issued 2,000 shares," I was thinking of the position before the reorganization which took place last year. Last year when we reorganized and admitted the American society it was arranged to issue the whole of the share capital, and each society holds 5,000 shares.

The CHAIRMAN: The correction is that you have issued 10,000 shares, 5,000 of which now issued to the American Society, and 5,000 shares are now issued to the Performing Right Society of England?

The WITNESS: That is so. And the final matter—there is one other little matter to correct, this is on page 9. As Mr. Ernst, in cross examining, suggested, I should have said, "that publications would not include gramaphone records and other mechanical contrivances."

The CHAIRMAN: I think that the report as far as I have read it has been very fairly made. Reporters do make mistakes, but I think the report has been very well done.

The WITNESS: It has.

Mr. CHEVRIER: I agree to that.

The committee adjourned, to resume at 4:00 o'clock.

AFTERNOON SITTING

On resuming at 4 p.m.

The CHAIRMAN: Gentlemen, I understand before we hear argument, Mr. Hawkes wishes to make some statement.

Mr. HAWKES: Yes, sir.

RALPH HAWKES, called.

The CHAIRMAN: You are still giving evidence under oath, Mr. Hawkes.

The WITNESS: In connection with the statement that the user could not find out what music is controlled by the society, I have already stated in evidence we issue lists of publishers, and it has also been stated that the user may know what music is copyrighted.

Now, on every piece of music that is published, in almost I suppose 99·9 per cent of the cases, full details as to the date of copyright and name of the publisher, and the origin of the work appear on the publication, and therefore it is quite within the ability of the user to know that the work is copyrighted, and if he sees the publisher's name on the bottom of the work, as I have already stated it appears there, he can very well, by referring to the list of publisher members which is issued and circulated by the society, find out that is controlled.

By Mr. Bury:

Q. There is no application on the front for that information?—A. There is an application, because every work other than those of American origin, have to print the date of their copyright in order to secure copyright within the United States; on works of American origin,—

By the Chairman:

Q. Why, if you can give that information promiscuously to all inquiries, should you not facilitate the giving of information by filing your lists with the Department of Secretary of State in the Copyright office.—A. Filing our catalogue?.

Q. Suppose you file— A Publishers' catalogue?

Q. Yes.—A. Filing publishers' catalogues would simplify the situation, I grant you.

Q. If you would take the trouble from time to time to draw a red line through those names in the publishers' catalogues of the works whose copyright you do not control or in which no copyright subsists?—A. I understand sir.

Q. Supposing we decide to facilitate your filing of lists, and in order to do that we were to go so far as to provide that you can file amended publishers' lists, what objection is there— A. Amended publishers' catalogues?

Q. Yes.—A. I do not think there would be any practical objection to filing publishers' catalogues as they are at present printed. We could not, of course, control different publisher members, because they print their catalogues in all shapes and sizes, and different language.

Q. You would have to guarantee that copyright subsists in the works which are included in such catalogues?—A. We can only accept the moral guarantee of the publisher member that he has claimed his copyright in connection with that. I venture to suggest that copyright is never substantiated as ones own until you have fought an action against a person who suggests it is not a copyright.

By Mr. Bury:

Q. You virtually adopt that catalogue and send it in as your list for the purpose of filing with the department.—A. Yes.

Q. What objection is there to that?—A. I do not think there would be any practical objection to sending in publisher catalogues as they are at present printed.

By the Chairman:

Q. Then you would put the burden upon the Copyright office of arranging these catalogues and——A. Classifying them.

Q. You seem to think it would be a tremendous burden for your company to do it. A. We have French, German, Spanish, Portugese, and all sorts to deal with. It is a considerable task. That is all I have to say. I wished to make that point clear.

Q. May I ask you this? It is purely a hypothetical question which came to my mind. There is one clause in our statute to which frequent reference is made by those who are discussing copyright with me, and that is subsection 3 of section 20, which provides: "In any action for infringement of copyright in any work, the work shall be presumed to be work in which copyright subsists, and the plaintiff shall be presumed to be the owner of the copyright." That is the presumption of law made under the statute. Now, it has been suggested to me that, except as to the author's original title, that presumption should only prevail in case the assignment of the author's title to the copyright is registered under our statute; that is, it has been suggested that registration be optional, but that, if you as transferee do not register your assignment you should lose that presumption and be compelled, in a case in which your company is plaintiff, to prove your title to the court. If it is registered, why then the presumption would be in your favour, that the title was vested in you as plaintiff. And in discussing that with the lawyers they suggest that when your company comes into the courts to sue as plaintiff, the mere commencement of a suit and the assertion of the claim by your company should not be sufficient to establish for you a clear presumptive title. They suggest that the ordinary method of civil suit whereby the defendant can demand production of documents and issue a commission of into the validity of documents and that sort of thing, is not effective inasmuch as there is a clear statutory presumption in your favour; simply because you have commenced a suit, that you are the real owner and that your title is valid. And I was wondering whether some of the difficulties which we had might not be obviated were we to consider an amendment to that section, to state that the work shall be presumed to be a work in which copyright subsists, and that the plaintiff, other than the author, if his title by assignment is registered, shall then only be presumed to be the owner of copyright. Perhaps you would like that discussed by your legal adviser?

Mr. HAWKES: That is a legal point.

The CHAIRMAN: That is all. There is no further evidence.

APPENDIX

This Indenture made the 15th day of February, 1926, One thousand nine hundred and twenty-six between the Performing Right Society, Limited whose Registered Office is at Chatham House, 13 George street, Hanover Square, in the county of London (hereinafter referred to as "the Assignor") party hereto of the one part and the Canadian Performing Right Society, Limited whose Registered Office is at 1405 Royal Bank Building, Toronto, in the province of Ontario (hereinafter referred to as " The Assignee") of the other part witnesseth that in consideration of the covenant by the Assignee with the Assignor hereinafter contained the Assignor doth hereby assign unto the Assignee first all that the right of performance in Canada of the music of each and every song or musical work not being a musical play the right of performance in Canada of which now belongs to or shall hereafter be acquired by or be or become vested in the Assignor during the continuance of this agreement and secondly all that part (being so much) of the right of performance in Canada of the music of each and every musical play of which such part of the right of performance in Canada now belongs to or shall hereafter be acquired by or become vested in the Assignor as well enable the Assignee lawfully to perform or authorize or forbid the performance of separate numbers fragments or arrangements of melodies or selections forming part or parts of each such musical play but not the peformance thereof in its entirety or any substantial part thereof as a stage play which last mentioned right is hereby expressly reserved by the Assignor all which premises first and secondly hereinbefore described and hereby assigned or expressed and intended so to be are hereinafter collectively referred to as the said performing rights and are to be held by the Assignee for the period of this agreement as hereinafter provided and the Assignee doth hereby convenant with the Assignor that the Assignee will during the continuance of this agreement make all reasonable efforts to collect all sums properly payable whether by way of royalty damage costs of suit or otherwise in respect of the performance in public of the said performing rights and pay over at the end of the Assignee's financial year the moneys so collected less such working expenses as may have been submitted to and approved by the Assignor and less any sums which may have properly been placed to the Assignee's reserve fund in accordance with the Assignee's by-laws and the Assignor doth hereby covenant with the Assignee that the Assignor shall and will so long as this agreement shall continue to execute and make all such acts deeds powers of attorney assignments and assurances for the better or more satisfactory assigning or assuring to or vesting in the Assignee or enabling the Assignee to enforce the rights hereby expressed to be assigned or any of them as the Assignee may from time to time reasonably require and the Assignee further covenants upon the expiration of five years from the date hereof or at such earlier date as may be appointed by one calendar

28635—3

month's notice in writing by the Assignor to re-assign to the Assignor all the said performing rights assigned to or vested in the Assignee by or in pursuance of this agreement.

In witness whereof the Assignor and Assignee have hereunto affixed their respective Common Seals the day and year first above written.

The common Seal of the Performing Right Society, Limited, was hereunto affixed in the presence of

WILLIAM BOOSEY,
ADRIAN ROSS,
Members of the Committee.

C. F. JAMES,
Secretary.

(Seal)

The common Seal of the Canadian Performing Right Society, Limited, was hereunto affixed in the presence of

H. T. JAMIESON,
Director.

PERCY SCHUTTE,
Secretary.

(Seal)

Agreement made this 21st day of May, 1930, between American Society of Composers, Authors and Publishers, and unincorporated association consisting of more than seven (7) members, having an office at 1501 Broadway, City, County and State of New York, United States of America, hereinafter designated as the "Licensor" and the Canadian Performing Right Society, Limited, a corporation organized under the laws of the Dominion of Canada, Province of Ontario, having an office at 1405 Royal Bank Building, City of Toronto, Province of Ontario, Dominion of Canada, hereinafter designated as the "Licensee," as follows:

1. The Licensor grants to the Licensee the exclusive right to licence, in the Dominion of Canada, the public performance of non-dramatic renditions of the separate musical compositions, such rights of public performance in which, now belongs to or shall hereafter be acquired by or be or become vested in the Licensor during the term of this agreement.

2. This licence shall not extend to or be deemed to include:

(*a*) Oratories, choral, operatic or dramatico-musical works (including plays with music, revues, and ballets) in their entirety, or songs or other excerpts from operas or musical plays accompanied either by words, pantomime, dance or visual representation of the work from which the music is taken; but fragments or instrumental selections from such works may be instrumentally rendered without words, dialogue, costume, accompanying dramatic action or scenic accessory, and unaccompanied by any stage action or visual representation (by motion picture or otherwise) of the work of which such music forms a part.

(*b*) Any work (or part thereof) whereof the stage presentation and singing rights are reserved.

3. The Licensor reserves the right at any time to withdraw from its repertory and from the operation of this licence, any musical work.

4. All rights not specifically granted in the works herein embraced, are hereby reserved and excepted from this agreement and may be freely exercised in the territory herein embraced by the owners thereof, free from any claim with respect thereto on the part of the Licensee.

5. In consideration of the licence herein granted, the Licensee agrees to pay to the Licensor a sum equal to forty-five per cent (45%) of gross income from all sources of the Licensee, less its operating expenses other than such forty-five per cent (45%).

Such sum shall be determined and paid during the term hereof as follows:

First period from the date hereof to Jan. 5, 1931;
Second period from Jan. 5, 1931 to Jan. 5, 1932;
Third period from Jan 5, 1932 to Jan. 5, 1933;
Fourth period from Jan 5, 1933 to Jan. 5, 1934.

The Licensee shall furnish to the Licensor a proper accounting, and simultaneously therewith make payment due to the Licensor, as shown by such accounting, within thirty (30) days after the end of each of the above mentioned respective periods.

6. The Licensee agrees to use its best efforts to collect all sums properly payable, whether by way of royalty damage, costs of suits or otherwise in respect of the use of the performing rights therein granted to the Licensee in the territory herein embraced.

7. The Licensor agrees from time to time, during the term hereof, to execute, make, acknowledge and deliver all such acts, deeds, powers of attorney, assignments, assurances and other documents as may be reasonably proper, necessary or expedient to vest in the Licensee the rights herein embraced and to enable the Licensee to enforce such rights.

8. The term of this licence is for a period commencing as of this date and ending January 5th, 1934.

In witness whereof the parties hereto have caused these presents to be executed the day and year first above written.

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS,

By GENE BUCK,
President.

THE CANADIAN PERFORMING RIGHT SOCIETY, LIMITED

By H. T. JAMIESON,
President.

Attest:

J. C. ROSENTHAL,
Assistant Secretary.

Agreement made this twenty-fourth day of July, One Thousand Nine Hundred and Thirty between The Performing Right Society, Limited, whose Registered Office is at Chatham House 13 George Street Hanover Square in the County of London England (hereinafter designated as the "Licensor") and The Canadian Performing Right Society, Limited, a corporation organized under the laws of the Dominion of Canada, Province of Ontario, having an office at 1405 Royal Bank Building, City of Toronto, Province of Ontario, Dominion of Canada (hereinafter designated as the "Licensee") as follows:—

1. The Licensor grants to the Licensee the exclusive right to licence, in the Dominion of Canada, the public performance of non-dramatic renditions of the separate musical composition, the rights of public performance in which are now controlled by or belong to or shall hereafter be acquired or controlled by or be or become vested in the Licensor during the term of this agreement.

2. The Licensor reserves the right at any time to withdraw from the operation of this licence, any musical work in its repertory.

3. All rights not specifically granted in the works herein embraced are hereby reserved and excepted from this agreement and may be freely exercised in the territory herein embraced by the owners thereof, free from any claim with respect thereto on the part of the Licensee.

4. In consideration of the licence herein granted, the Licensee agrees to pay to the Licensor a sum equal to forty-five per cent (45%) of the gross income of the Licensee from all sources, less its operating expenses other than such forty-five per cent (45%).

Such sum shall be determined during the term hereof as follows:

First period from Jan. 6th 1930 to Jan. 5th 1931;
Second period from Jan. 6th 1931 to Jan. 5th 1932;
Third period from Jan. 6th 1932 to Jan 5th 1933;
Fourth period from Jan. 6th 1933 to Jan. 5th 1934.

The Licensee shall furnish to the Licensor a proper accounting, and simultaneously therewith make payment due to the Licensor, as shown by such accounting, within thirty (30) days after the end of each of the above mentioned respective periods.

5. The Licensee agrees to use its best efforts to collect all sums properly payable, whether by way of royalty damages, costs of suits or otherwise, in respect of the exercise of the rights herein granted to the licensee in the territory herein embraced.

6. The Licensor agrees from time to time, during the term hereof, to execute, make, acknowledge and deliver all such acts, deeds, powers of attorney, assignments, assurances and other documents as may be reasonably proper, necessary or expedient to vest in the Licensee the rights herein embraced and to enable the Licensee to enforce such rights.

7. The term of this licence is for a period commencing from 6th January 1930 and ending 5th January 1934.

In witness whereof the parties hereto have hereunto affixed their respective Common Seals the day and year first above written.

The Common Seal of The Performing Right Society Limited was hereunto affixed in the presence of

(Seal)
Of the Performing Right Society Limited

THOMAS P. DUNHILL,
L. J. SAVILLE,
Directors.

H. H. HATCHMAN,
Secretary.

The Common Seal of the Canadian Performing Right Society Limited was hereunto affixed in the presence of

Form B.

ASSIGNMENT OF CANADIAN PERFORMING RIGHT

Know All Men by These Presents, That for and in consideration of the sum of ONE DOLLAR ($1.00) and other good and valuable considerations received from CANADIAN PERFORMING RIGHT SOCIETY, LIMITED (hereinafter called the "Assignee") the Undersigned (hereinafter called the "Assignor") doth hereby bargain, sell, assign, transfer and set over unto the Assignee, its successors and assigns, for the period from the date hereof until December 31, 1935, that part of the Copyright in the Dominion of Canada in certain Musical Work entitled.....

.....

consisting of the sole right to perform the said Musical Work in public throughout the Dominion of Canada, together with the right to the Assignee to register its ownership of the said, right to perform the said Musical Work in public and this Assignment, the Author of the words of said Musical Work being.....

.....Citizen (or Subject)

of.....Resident of

.....

when the afore said words were composed and written, and the Composer of the music of the said Musical Work being.....

.....Citizens

(or Subject) of.....Resident of

.....

when the aforesaid music was composed and written.

In Witness Whereof This Assignment has been duly executed this.....

.....day of .....19....

Signed, sealed and delivered in the presence of } By.....
President.

Form A.

ASSIGNMENT OF CANADIAN PERFORMING RIGHT

Know All Men by These Presents, That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations received from

.....

(Hereinafter called the "Assignee") the Undersigned (hereinafter called the "Assignors") do hereby bargain, sell, assign, transfer and set over unto the Assignee, its successors and assigns, for the period from the date hereof until December 31, 1935, that part of the Copyright in the Dominion of Canada in certain Musical Work entitled.....

.....

....., consisting of the sole right to perform the said Musical Work in public throughout the Dominion of Canada, together with the right to the Assignee to register its ownership of the said right to perform the said Musical Work in public and this Assignment, the Author of the words of the said Musical Work being the undersigned.....

..... Citizen

(or Subject) of.....Resident of

.....

when the aforesaid words were composed and writen, and the Composer of the music of the said Musical Work being the undersigned.....

Citizen (or Subject) of.....Resident of

.....

when the aforesaid music was composed and written, and the Publisher of the said Musical Work being the undersigned.....

.....

In Witness Whereof, this assignment has been duly executed this.....

..... day of.....19....

Signed, sealed and delivered in the presence of

.....(L.S.)
Author

.....(L.S.)
Composer

.....

By.....

SESSION 1931

HOUSE OF COMMONS

MINUTES OF PROCEEDINGS AND EVIDENCE

OF THE

SPECIAL COMMITTEE

ON

BILL No. 4

AN ACT TO AMEND THE COPYRIGHT ACT

No. 6

TUESDAY, JUNE 2, 1931

Second Report, Etc.

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1931

REPORTS OF COMMITTEE TO THE HOUSE

Second Report

House of Commons, Canada,

Tuesday, June 2, 1931.

The Select Special Committee appointed to consider and report upon Bill No. 4, An Act to amend the Copyright Act, R.S.C. 1927, c. 32, begs to present the following as a Second Report:—

Your Committee has duly considered Bill No. 4, An Act to amend the Copyright Act, R.S.C. 1927, c. 32, and has agreed to report said Bill with amendments.

For the convenience of Parliament, the Committee has agreed to reprint the Bill in its amended form. A copy of the Bill reprinted as amended is herewith submitted, as is a printed copy of the Minutes of Proceedings and Evidence.

Your Committee recommends that the Orders of Reference, Reports, Proceedings and Evidence taken, be printed both as an appendix to the Journals of the House and in separate blue book form, 500 copies of the latter form to be printed in the English language and 200 copies in the French language; and that Standing Order 64 in relation thereto be suspended.

All of which is respectfully submitted.

C. H. CAHAN,
Chairman.

MINUTES OF PROCEEDINGS

COMMITTEE ROOM 268,

FRIDAY, May 22, 1931.

Pursuant to adjournment, and notice, the Committee met at 10.30 a.m.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan and Irvine.—5.

Mr. Bury in the Chair.

Minutes of proceedings of meetings held on Thursday, May 21, were taken as read.

Hon. Mr. Cahan in the Chair.

Mr. Arthur W. Anglin, K.C., Toronto, of Counsel for Canadian Performing Right Society, resumed and concluded his address to the Committee.

The Committee adjourned until 4.00 p.m. this day.

T. L. McEVOY,
Clerk of the Committee.

AFTERNOON SESSION

COMMITTEE ROOM 268,

FRIDAY, May 22, 1931.

Pursuant to adjournment, the Committee convened at 4.00 p.m.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, and Irvine.—5.

Hon. Mr. Cahan in the Chair.

Mr. R. C. H. Cassells, K.C., Toronto, of counsel for Canadian Performing Right Society, submitted suggested amendments to subsections 2 and 3 of section 10 of Bill No. 4.

Mr. Arthur J. Thomson, K.C., Toronto, of counsel for Motion Picture Producers' and Distributors' Association, addressed the Committee.

Mr. R. C. H. Cassells, K.C., was heard in reply.

The Committee adjourned until Tuesday, May 26, at 10.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

COMMITTEE ROOM 268,

TUESDAY, May 26, 1931.

Pursuant to adjournment, and notice, the Committee met at 10.30 a.m.

Members present: Messrs, Bury, Cahan, Chevrier, Cowan, Irvine and Rinfret.—6.

Hon. Mr. Cahan in the Chair.

The minutes of proceedings of Friday, May 22, were taken as read.

The Chairman read a letter from Miss Luise Sillcox, secretary, The Authors' League of America, in which she makes certain observations with reference to the testimony she gave before the Committee on Wednesday, May 20.

Ordered that this letter be printed in the Appendix to the Minutes of Evidence and appear therein as Exhibit "AA6".

The Committee considered Bill No. 4 generally and discussed proposed amendments to the following sections of the Bill: sec. 2, ss. (1) (v); sec. 4 (2); sec. 5; sec. 6; sec. 7; sec. 8; sec. 9; sec. 10; sec. 11.

Progress reported.

Committee adjourned until Thursday, May 28, at 10.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

ROOM 268,

THURSDAY, May 28, 1931.

Pursuant to notice, and adjournment, the Committee met at 10.30 a.m. this day.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Irvine and Rinfret.—6.

Hon. Mr. Cahan in the Chair.

Minutes of last meeting were taken as read.

The Committee resumed the discussion of proposed amendments to the sections under consideration at the last meeting. Sections 13, 14, in addition, were discussed.

In view of the evident need for reframing and recasting of Bill No. 4, consequent upon numerous proposed amendments on motion of Mr. Bury.

Ordered: That proofs of Bill No. 4 as revised and recast be printed and be available for distribution to the Committee not later than Saturday, May 30, 1931.

Progress reported.

The Committee adjourned to meet at the call of the Chair.

T. L. McEVOY,
Clerk of the Committee.

COMMITTEE ROOM 268,

MONDAY, June 1, 1931.

Pursuant to adjournment, and notice, the Committee met at 10.30 a.m. this day.

Members present: Messrs. Bury, Cahan, Chevrier, Cowan, Irvine and Rinfret.—6.

Hon. Mr. Cahan in the Chair.

Minutes of last meeting were taken as read.

The Committee then proceeded to the consideration of the Bill clause by clause.

Clause (1) adopted.

Clause (2):

Sub-clause (1); paragraph (*u*), on motion of Mr. Bury that the word "original" be inserted after the word "every" in line 11: carried. Clause as amended adopted.

Sub-clause (2): paragraph (*m*), on motion of Mr. Chevrier, adopted;

Sub-clause (3): paragraph (*q*), on motion of Mr. Rinfret, adopted.

Clause (3):

On motion of Mr. Bury, paragraph (*e*) adopted:

On motion of Mr. Chevrier, paragraph (*f*) adopted.

Clause (4):

On motion of Mr. Chevrier, sub-clause (1) adopted;

On motion of Mr. Rinfret, the word "two" in the third line of sub-clause (2) was struck out and the word "one" substituted therefor. Cub-clause, as amended, adopted.

Clause (5):

On motion of Mr. Bury, the words "the publication of" in the fourth and fifth lines of this Clause were struck out. The Clause, as thus amended, was adopted, on division.

Clause (6):

On motion of Mr. Bury all the words after "The first subsection," on page 2 of the Bill, to and including the word "claims" in the 7th line on page 3 of the Bill, were struck out, and the following substituted therefor:

6. Subsection one of section seventeen of said Act is hereby amended by adding thereto the following clauses:

(vii) The performance of any musical work by any church, college or school, or by any religious, charitable or fraternal organization, provided such performance is given without private profit for religious, educational or charitable purposes;

(viii) The performance without private profit of any musical work at any agricultural exhibition or fair which is held under Dominion, Provincial or Municipal authority.

Clause (6); as thus amended, adopted, on division.

Clause (7):

On motion of Mr. Bury, the words "Section twenty" to and including the words "by this Act," at the end of subclause (5) were struck out and the following substituted therefor:

7. Subsection three of section twenty of said Act is hereby repealed and the following subsections substituted therefor:

Presumptions as to copyright and ownership.

3. In any action for infringement of copyright in any work, in which the defendant puts in issue either the existence of the copyright, or the title of the plaintiff thereto, then, in any such case.

(*a*) The work shall, unless the contrary is proved, be presumed to be a work in which copyright subsists; and

(*b*) The author of the work shall, unless the contrary is proved, be presumed to be the owner of the copyright;

Provided that where any such question is at issue, and no grant of the copyright or of an interest in the copyright, either by assignment or licence, has been registered under this Act, then, in any such case:—

(i) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(ii) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed, or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purpose of proceedings in respect of the infringement of copyright therein.

Assessment of damages.

4. If any person shall infringe the copyright in any work which is protected under the provisions of this Act such person shall be liable to pay such damages to the owner of the right infringed as he may have suffered due to the infringement, and in addition thereto such part of the profits which the infringer shall have made from such infringement as the court may decide to be just and proper; and in proving profits the plaintiff shall be required to prove only receipts or revenues derived from the publication, sale or other disposition of an infringing work, or from any unauthorized performance of the work in which copyright subsists; and the defendant shall be required to prove every element of cost which he claims. (New.)

Protection of separate rights.

5. The author or other owner of any copyright or any person or persons deriving any right, title or interest by assignment or grant in writing from any author or other owner as aforesaid, may each, individually for himself, in his own name as party to a suit, action or proceeding, protect and enforce such rights as he may hold, and to the extent of his right, title, and interest is entitled to the remedies provided by this Act. (New.)

Concurrent jurisdiction of Exchequer Court.

6. The Exchequer Court of Canada shall have concurrent jurisdiction with provincial courts to hear and determine all civil actions, suits, or proceedings which may be instituted for violation of any of the provisions of this Act or to enforce the civil remedies provided by this Act. (New.)

Sub-clause (3) as amended, adopted;

Sub-clause (4) as amended, adopted, on division;

Sub-clause (5) as amended, adopted;

Sub-clause (6) as amended, adopted.

Clause 8:

On motion of Mr. Bury, clause (8) was adopted.

Clause 9:

On motion of Mr. Bury, all the words "Section forty" to and including the words "brought under this Act", on line 27, page 4 of the Bill, were struck out and the following substituted therefor:—

9. Section forty of said Act is hereby repealed and the following section is substituted therefor:—

Registration of a grant of interest in copyright.

40. Any grant of an interest in a copyright, either by assignment or licence, may be registered in the Registers of Copyright at the Copyright Office, upon production to the Copyright Office of the original instrument and a certified copy thereof, and payment of the prescribed fee.

2. The certified copy shall be retained at the Copyright Office and the original shall be returned to the person depositing it, with a certificate of its registration endorsed thereon or affixed thereto.

When grant is void.

3. Any grant of an interest in a copyright, either by assignment or licence, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless such prior assignment or licence is registered in the manner prescribed by this Act before the registering of the instrument under which such subsequent assignee or licensee claims.

Rectification of register by the Court.

4. The Exchequer Court of Canada or a judge thereof may, on application of the Registrar of Copyrights or of any person aggrieved, order the rectification of any register of Copyrights under this Act by

(*a*) the making of any entry wrongly omitted to be made in the register; or

(*b*) the expunging of any entry wrongly made in or remaining on the register; or

(*c*) the correction of any error or defect in the register; and any such rectification of the register shall be retroactive from such date as the court or judge thereof may order. (New.)

Execution of instruments in United Kingdom, Dominions, or in United States.

5. Any instruments referred to in this section may be executed, subscribed or acknowledged at any place in the United Kingdom or in any of His Majesty's dominions, colonies or possessions, or in the United States of America, by the assignor, grantor, licensor or mortgagor, before any notary public, commissioner or other official or the judge of any court, who is authorized by law to administer oaths or perform notarial acts in such place, and who also subscribes his signature and affixes thereto or impresses thereon his official seal or the seal of the court of which he is such judge. (New.)

Execution of instruments in foreign countries.

6. Any such instrument *executed in any other foreign country by the assignor, grantor, licensor or mortgagor may be acknowledged or subscribed by the parties thereto* before any notary public, commissioner, or other official or the judge of any court of such foreign country, who is authorized to administer oaths or perform notarial acts in such foreign country and whose authority shall be proved by the certificate of a diplomatic or consular officer of the United Kingdom or of Canada exercising his functions in such foreign country. (New.)

Seals to be *prima facie* evidence.

7. Such official seal or seal of the court or such certificate of a diplomatic or consular officer shall be *prima facie* evidence of the execution of the instrument; and the instrument with such seal or certificate affixed or attached thereto shall be admissible as evidence in any action or proceeding brought under this Act without further proof. (New.)

8. The provisions of subsections five and six of this Section shall be deemed to be permissive only, and the execution of any documents referred to in this Section may in any case be proved by oral testimony. (New.)

Sub-clauses one, two, three, four, five, seven and eight as amended adopted.

Sub-clause six, on motion of Mr. Bury, was further amended by striking out the words "executed" to and including the words "by the parties thereto" as italicised above and substituting therefor: "may be executed, subscribed or acknowledged by the assignor, grantor, licensor or mortgagor, in any other foreign country."

Sub-clause (6), as thus amended, adopted.

Clause 10:

On motion of Mr. Bury, all the words "Each and every" to and including the words "Governor in Council" in line 12, page 5 of the Bill, were struck out and the following substituted therefor:

Performing rights.

10. Each association, society or company which carries on in Canada the business of acquiring copyrights of dramatico-musical or musical works or of performing rights therein, and which deals with or in the issue or grant of licences for the performance in Canada of dramatico-musical or musical works in which copyright subsists, *under the provisions of the Copyright Act*, shall, from time to time, file with the Minister at the Copyright Office:—

Lists of works to be filed.

(a) Lists of all dramatico-musical and musical works, in respect of which such association, society or company claims authority to issue or grant performing licences or to collect fees, charges or royalties for or in respect of the performance of such works in Canada; and

Statement of fees, charges and royalties.

(b) Statements of all fees, charges or royalties which such society, association or company proposes from time to time or at any time to collect in compensation for the issue or grant of licences for or in respect of the performance of such works in Canada. (New.)

Revision of fees, charges and royalties by Governor in Council.

2. Whenever in the opinion of the Minister, after an investigation and report by a Commissioner appointed under the Inquiries Act, any such society, association or company exercises in Canada a substantial control of the performing rights in dramatico-musical

or musical works in which copyright subsists under the provisions of the Copyright Act and which *thereby* constitutes a monoply which is *deemed prejudicial to the public interests*, then and in any such case, the Governor in Council on the recommendation of the Minister is authorized from time to time to revise, *reduce* or otherwise prescribe the fees, charges or royalties which any such society, association or company may lawfully sue for or collect in respect of the issue or grant by it of licences for the performance of all or of any such works in Canada. (New.)

No excess fees, charges or royalties permitted.

3. No such society, association or company shall be entitled to sue for or to collect any fees, charges or royalties for or in respect of licences for the performance of all or of any such works in Canada which are not specified in the lists from time to time filed by it at the Copyright Office as herein provided, nor to sue for or collect any fees, charges or royalties in excess of those specified in the statements so filed by it, nor of those otherwise prescribed by Order of the Governor in Council. (New.)

On motion of Mr. Bury the word "thereby" in the 7th line of subclause 2 above was struck out; and the words "deemed prejudicial to the public interests" in 8th line above were struck out and the following substituted therefor: " so operated as to be detrimental to the interests of the public;"

On motion of Mr. Chevrier, the word " reduce " in the 11th line of subclause (2) above, was struck out.

Clause 10, as thus further amended, adopted, on division.

Clause 11:

On motion of Mr. Bury, this clause of the Bill was struck out.

Clause 12:

On motion of Mr. Chevrier this clause was adopted and now becomes clause 11 of the Bill.

Clause 13:

On motion of Mr. Rinfret, this clause of the Bill was struck out.

Clause 14:

On motion of Mr. Bury, this clause was amended by striking out the word " as " in the last line and substituting therefor the words " and which is."

The clause, as amended, was adopted and becomes Clause 12 of the Bill.

Progress reported.

The Committee adjourned until 9 p.m. this day.

T. L. McEVOY,

Clerk of the Committee.

EVENING SESSION

MONDAY, June 1, 1931.

Pursuant to adjournment, the Committee convened at 9 p.m.

Members Present: Messrs. Bury, Cahan, Chevrier, Cowan, Irvine and Rinfret.—6.

Hon. Mr. Cahan in the Chair.

Clause 10, as amended at this morning's session, was further considered.

On motion of Mr. Bury, the words " under the provisions of the Copyright Act " in line 7, subclause one, italicized above, were struck out. Carried.

On motion of Mr. Bury all the words in subclause two, commencing with the word "whenever," to and including the words " interests of the public," are struck out and the following substituted therefor:

2. Whenever in the opinion of the Minister, after an investigation and report by a Commissioner appointed under the *Inquiries Act*, any such society, association or company which exercises in Canada a substantial control of the performing rights in dramatico-musical or musical works in which copyrights subsists, unduly witholds the issue or grant of licences for or in respect of the performance of such works in Canada, or proposes to collect excessive fees, charges or royalties in compensation for the issue or grant of such licences, or otherwise conducts its operations in Canada in a manner which is deemed detrimental to the interests of the public ". . . .

Subclause two, as thus amended, adopted, on division.

On motion of Mr. Bury the words " revised or " were inserted immediately after the word " those " in the second last line of subclause three. Carried.

On motion of Mr. Rinfret.

Ordered that the Committee do report the Bill with amendments.

On motion of Mr. Bury,

Ordered that the Committee report that it has agreed to reprint the Bill in its amended form and that a copy of the Bill, reprinted as amended, be submitted with the report, together with a printed copy of the Minutes of Proceedings and Evidence;

Ordered that the Committee report recommending that the Orders of Reference, Reports, Proceedings and Evidence taken, be printed both as an appendix to the Journals of the House and in separate blue book form, 500 copies of the latter form to be printed in the English language and 200 copies in the French language; and that Standing Order 64 in relation thereto be suspended.

The Committee adjourned sine die.

T. L. McEVOY,
Clerk of the Committee.

APPENDIX TO MINUTES OF EVIDENCE

EXHIBIT AA6

MAY 22, 1931.

The Secretary of State,
House of Commons,
Ottawa, Canada.

DEAR SIR,—I have just read over my testimony on May 20th before the Special Committee on Bill No. 4 to amend the Copyright Act. I find that in several places phrases or sentences have been left out so that the meaning is not clear. Evidently the reporter had difficulty not in hearing what I said, but in following the testimony because of the rapidity of my speech.

I have corrected the proof and returned it to Mr. McEvoy. In order that the record may be clear, however, in case any reference is made to this testimony by the committee, may I point out that in the uncorrected proofs the impression is given in one or two places that our organization assigns various rights in certain instances or has control over rights in specific instances. It has occurred to me that if I called your attention to the fact that in giving testimony I used the word "we" repeatedly in referring to dramatists and authors as a class, not as referring to our organization, it would make the testimony clearer. The Authors' League is a national membership organization of authors and dramatists, but the organization does not own any rights or assignments, nor does it act as agent for its members' rights.

The rights in all works of our members vest in the members and the organization receives no share of the profits from the sale or lease of the rights. The organization is entirely a service organization supported by annual dues of members. The dues are not contingent upon the amount of the member's earnings, but are a flat sum per year. The organization very frequently advises members as to contracts which they enter into with publishers, producers, agents and so on, so that we are in very close touch with their affairs, but no additional fee is charged for such service.

In case you may wish to have these on file, I am enclosing herewith the constitutions of the Authors' Guild and the Dramatists' Guild. The standard forms of contract referred to in both constitutions are contracts in which the individual prices to be charged are negotiated between author and manager or producer, and are not part of the standard form.

Respectfully yours,

LUISE M. SILLCOX,
Secretary.